

Pamph.
Pol. Sci.
Loc. Govt.
R.

(Iowa - Politics and government)

THE GOVERNMENT OF SPECIAL CHARTER CITIES IN IOWA

BY

GEO. F. ROBESON

111


SUBMITTED TO THE FACULTY OF THE GRADUATE COLLEGE OF THE
STATE UNIVERSITY OF IOWA IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

IOWA CITY IOWA
1923



3 1761 09702505 0





Digitized by the Internet Archive
in 2014

**SPECIAL CHARTER CITIES
IN IOWA**

THE GOVERNMENT OF SPECIAL CHARTER CITIES IN IOWA

BY
GEO. F. ROBESON

SUBMITTED TO THE FACULTY OF THE GRADUATE COLLEGE OF THE
STATE UNIVERSITY OF IOWA IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

IOWA CITY IOWA
1923

AUTHOR'S PREFACE

IN 1915 the author undertook an analysis of the special charters and their amendments which had been granted by legislative act to cities and towns in Iowa. That study, which subsequently appeared in *The Iowa Journal of History and Politics* for April, 1920, was an attempt to account for the development of the practice of special charter incorporation in Iowa and by a critical examination of documentary material to determine accurately the powers and scope of the government of those municipalities which had at one time been granted special charters. Furthermore, a comparison was made of the powers possessed by such cities and the powers which were to be given to those electing to come under the new general incorporation act. This comparison led to the conclusion that as far as powers which a municipality might exercise were concerned the status of the two kinds of cities — those under special charter and those under general act — presented little if any contrasts.

The original study covered the period from 1838 to 1858 — the latter year being a convenient point for closing the subject since no more charters or amendments could be legally enacted on account of the prohibition against special legislation contained in the new Constitution which went into operation in 1857.

The present study attempts a treatment of the whole problem of the incorporation of cities by special charter in Iowa and covers the period from 1838 to 1923. The purpose of this study has been to show the origin, history, and present status of the cities operating under special charter both as areas of local self-government and as administrative units of the State. A brief summary of the general charter provisions, the provisions of the charters now in force, and the legislation made applicable to such cities since 1858 are discussed in connection with each subject.

The main features of the study may be indicated as (1) the methods of securing charters and amendments from the General Assembly, (2) the evils and instances of special legislation (both before and after the constitutional prohibition in 1857), (3) the court decisions relative to the statutes dealing with such cities, and (4) the advantages and disadvantages of continuing under special charters. Moreover, the appendices contain a few of the charters, two of which are in operation at the present time.

In some respects these early special charters present features of the home rule idea : in theory each charter was intended to provide the individual municipality with a definite and suitable frame of government. In actual practice, however, interference by the legislature has removed most of the distinctions between these special charter cities and the cities organized under the general incorporation act. Indeed, since this book was written

Glenwood, one of the special charter cities, has voted to abandon its charter and on April 1, 1923, became incorporated under the general law.

The writer wishes to acknowledge his obligation to Professor Benj. F. Shambaugh and Professor Frank E. Horack, both of the State University of Iowa, for their interest and their encouragement, without which this study may never have been completed. Miss Helen Otto assisted in the verification of the manuscript; and Mr. J. A. Swisher compiled the index.

GEO. F. ROBESON

THE STATE UNIVERSITY OF IOWA
IOWA CITY IOWA

CONTENTS

EDITOR'S INTRODUCTION	7
AUTHOR'S PREFACE	9
I. HISTORICAL INTRODUCTION	17
II. THE INCORPORATION OF CITIES BY SPECIAL ACT IN IOWA	23
III. ELECTIONS IN SPECIAL CHARTER CITIES	35
IV. OFFICERS IN SPECIAL CHARTER CITIES	41
V. DUTIES OF OFFICERS, BOARDS, AND COMMISSIONS	55
VI. THE ORGANIZATION OF THE COUNCIL	65
VII. POWER TO PASS ORDINANCES	74
VIII. SPECIAL POWERS CONFERRED BY CHARTER AND STATUTE	81
IX. POLICE POWER	97
X. FINANCIAL POWERS OF SPECIAL CHARTER CITIES	117
XI. TAXATION IN SPECIAL CHARTER CITIES	128
XII. THE ADMINISTRATION OF JUSTICE	139
XIII. CONTROL OVER STREETS AND ALLEYS	147
XIV. PUBLIC UTILITIES IN SPECIAL CHARTER CITIES	165

XV. CONCLUSION	174
APPENDIX A : STATUTORY REFERENCES TO SPECIAL CHARTER CITIES	187
APPENDIX B : THE DAVENPORT CHARTER WITH AMENDMENTS	191
APPENDIX C : THE CAMANCHE CHARTER	223
APPENDIX D : THE BLOOMFIELD CHARTER	236
APPENDIX E : THE HOME RULE CHARTER	239
NOTES AND REFERENCES	247
INDEX	275

I

HISTORICAL INTRODUCTION

THE people who settled in the Iowa country came, for the most part, from the older settled regions east of the Mississippi River — more particularly from the States and Territories that had been created in the Old Northwest. It is a notable fact that these early settlers brought into the new country their customs and political institutions, even though not always adapted to the needs of a frontier community.

This tendency to transplant the laws and customs of other jurisdictions has been observed particularly in connection with the establishment of county and township government in Iowa. In fact some of the earlier laws providing for the regulation of these local areas were taken bodily from the statutes of Ohio.¹ Similar lack of discriminating judgment is clearly seen in the early legislation with reference to municipal government. Indeed, it appears that the practice of granting special charters to cities and towns in Iowa was adopted from Wisconsin and Michigan.²

CREATION OF SPECIAL CHARTERS IN ENGLAND

Thus it will be seen that the granting of special municipal charters was not an original idea with the pioneer lawmakers of Iowa; neither was it the creative work of the people of the States formed out of the Old Northwest. Indeed, special municipal charters were common

in colonial times — a fact which suggests their origin in England.³ It appears that the first English charter for the incorporation of a city was granted in 1439 to the borough of Kingston-upon-Hull;⁴ but the general movement for the incorporation of cities by special charter did not begin in earnest until the close of the fifteenth century.

The early English charters did not provide for the incorporation of the whole body of citizens, but only the few with whom the chief authority of the municipality rested. Thus, the granting of special privileges to a few whom the King could control made his power over Parliament all the more complete owing to the fact that many of its members were elected by the boroughs in which the incorporated oligarchies were supreme. Moreover, the purpose of these special charters seems to have been not to make the boroughs more independent or to encourage self-government, but rather to coerce them into harmony with the policy of the royal government which was strongly inclined toward centralization.⁵ Even as late as 1830 the English cities were rather completely under the control of the wealthy class.

The inhabitants of these special chartered cities in England were deprived of nearly all of the powers of self-government — being ruled by a group of officers over whom they had little or no authority. Indeed, ordinary municipal functions such as the lighting and paving of streets were not performed by the locality at all. In fact the corporation “embraced only such matters as the care of municipal property, the issue of police ordinances, and the discharge of certain functions connected with the administration of justice.”⁶

As might be presumed the borough was not looked

upon as a local unit organized for the performance of governmental functions : it was viewed, on the one hand, as a juristic person with property to be made use of for the benefit of those entitled to it, and, on the other hand, as a mere delegate of the national government, for which it acted in matters of state rather than of local concern.⁷

COLONIAL PRACTICE OF GRANTING SPECIAL CHARTERS

From the mother country the early colonists brought to America, along with the Common Law, the English form of municipal government; and so the chartered borough became an American institution. During the colonial period twenty boroughs were chartered. The first of these was New York, "which dates its civic existence from 1653, became an English municipal corporation in 1665, and received its first charter in 1686."⁸ Sixteen of the other charters granted during this period were similar to that of New York and were modeled after those existing in England at that time.

These charters were granted by the provincial Governors of the colonies, in much the same way as the English towns received their charters from the King. The principal authority was vested in a council composed of the mayor, recorder, aldermen, and assistants or councilmen as they were sometimes called. This council acted as a single body, and in addition to performing the usual administrative functions possessed certain judicial powers.⁹

Although the early colonial charters were in general like those in England during the same period, there was one important difference in organization : in only three of the American cities was the governing body made a

“close corporation”. In such cases the aldermen and councilmen held their positions for life, and vacancies were filled by the common council which thus became a self-perpetuating body : but with the exceptions noted the common council was elected by popular vote for a term varying from one year to life. The mayor was either chosen by the aldermen from their own number, as in the close corporation, or he was appointed by the colonial Governor.¹⁰

CONTROL OVER SPECIAL CHARTERS BY STATE LEGISLATURES

After the colonies had secured their independence the State legislatures assumed the authority of granting special municipal charters — a power hitherto exercised by the colonial Governor.¹¹ The first legislative charters were very similar to those which had been previously granted. The close corporation, however, soon ceased to exist and the council was made a regularly elected body. This fact did not tend to enlarge the powers of self-government, for by the close of the eighteenth century municipalities had come to be completely controlled by legislatures; and not even existing charters were considered as barring “any measure the legislature might feel disposed to enact.”¹²

The complete supremacy of the State legislatures over cities marks an important epoch in the history of municipal government in the United States. Whatever might have been the influences in bringing about this situation the results seem to have been unfortunate. This is evidenced by the fact that the early charters granted by the legislatures were very narrow in the scope of powers conferred upon cities, and included only the right to “exercise judicial powers through special courts that

were established, the right to issue police regulations, and the right to manage the property with which the cities were endowed by the charter". Furthermore, the only income of such municipalities was derived from fines or revenue from city property : they had no taxing power, but usually had authority to borrow money.¹³

The extremely narrow field in which the cities were authorized to operate resulted in repeated applications to the legislature for relief and for an enlargement of powers. Indeed, since the legislatures had assumed authority to grant the charters, the cities were powerless to perform any action or exercise any function unless "expressly granted or necessarily implied" by charter; and in interpreting the provisions of charters the courts have been very rigid.¹⁴

In the earlier years the theory had prevailed that a charter was a contract that could not be altered without the consent of the contracting parties. Following this interpretation the State legislatures made only those changes in the charters which were sought by the cities concerned; but by 1850 this practice had apparently been abandoned, since the legislatures were then enacting special laws for incorporated cities without their request or approval—a practice which was sustained by the courts.¹⁵

This practice of the State legislatures and the attitude of the courts was most unfortunate since it led to an era of special legislation, the evils of which were apparent almost from the first. The result was that the time and energy of legislatures were expended for purely local matters, when their attention ought to have been directed toward problems of more general concern. The logical outcome of this state of affairs was a wave of

dissatisfaction that resulted in most of the States, including Iowa,¹⁶ in constitutional prohibition of any such special legislation.¹⁷

PERIOD OF INCORPORATION BY GENERAL ACT

Finally, in America came the era of incorporation of cities by general act — an imitation of the English practice which began in 1835. This change in method of incorporation was accomplished chiefly by constitutional provision or amendment. In some cases special incorporations were prohibited, while in others the legislature was ordered to enact “*general provisions for the incorporation, regulation, and government*” of cities.¹⁸

II

THE INCORPORATION OF CITIES BY SPECIAL ACT IN IOWA

As has been pointed out the early settlers of Iowa came chiefly from the jurisdictions carved from the Old Northwest, bringing with them those political institutions with which they were familiar. These people were accustomed to the special charter form of municipal organization. As a matter of fact, the first two charters granted to municipalities in the Iowa country were enacted by the legislature of the original Territory of Wisconsin (to which Iowa was attached).

EXTENT OF INCORPORATION BY SPECIAL CHARTER IN IOWA

The first special charters granted to municipalities in the Iowa country were for the cities of Burlington and Fort Madison.¹⁹ Although they were approved on the same day (January 19, 1838) and are similar in general outline, these charters differ considerably in detail. While both charters provided for an annual election of officers by the qualified voters, it appears that they vary as to the time of holding the election, the number of officers, and the qualifications of voters. The Burlington charter, strangely enough, provided that the officers should "be commissioned by the governor of the territory".²⁰ Moreover, the Fort Madison charter permitted the council to appoint subordinate officers. Both charters authorized the council to levy taxes. Indeed, the

charter granted to Burlington seems to have been very liberal since the council was empowered to borrow money "for any public purpose", and the people were given an opportunity to vote on the acceptance of the charter. Both of these charters contained the provision that they might be repealed, altered, or amended by any future legislature.

The first legislature of the Territory of Iowa, which convened at Burlington in 1838, following the example of the Wisconsin legislation, enacted special charters for Bloomington (now Muscatine)²¹ and Davenport.²² The Bloomington charter was almost identical in its provisions with the Fort Madison charter mentioned above — as were also the charters of Salem, Farmington, Iowa City, and Mount Pleasant which were granted at a later date. Indeed, it appears that the statutes of the original Territory of Wisconsin and of the State of Michigan not only furnished the model but also provided the content for the first charters which were granted by the Territorial legislature of Iowa.²³

At the second session of the Iowa Legislative Assembly in 1839-1840, the towns of Salem and Dubuque were given charters; and in the following year Farmington, Nashville, and Iowa City were permitted to incorporate under special acts.²⁴ Davenport and Fort Madison were granted new charters in 1842 and at the same session Mount Pleasant and Keosauqua were authorized to incorporate under special acts.²⁵ During the next two regular sessions of the Assembly no special charters were granted, although at the session of 1843-1844 the Iowa City charter of 1841 was revived and declared to be in full force.²⁶ Burlington received a new charter in 1845, and in the following year Dubuque was given a

second charter.²⁷ Thus it appears that when Iowa became a State in 1846 a total of fifteen special charters had been granted — two by the legislature of the original Territory of Wisconsin and thirteen by the legislature of the Territory of Iowa.

In the year 1847 Farmington and Dubuque were granted new charters and the towns of Fairfield and Keokuk were given their first ones by the General Assembly of the State of Iowa²⁸ — the State legislature following the precedents laid down by the Territorial Assembly. Fort Madison was given a new charter — the third and last for that city — at the extra session in 1848.²⁹ Keokuk³⁰ received a second charter in 1849, and at the same session Cedar Rapids was voted a first charter.³¹ At the session of the legislature which convened at Iowa City in 1850 municipal charters were enacted for seven communities, namely, Bloomington (now Muscatine), Davenport, Iowa City, Mount Pleasant, Guttenberg, Bellevue, and Keosauqua.³² Indeed, up to this time, at no session of the Iowa legislature had so many charters been granted. During the next two sessions charters were granted to "Fort" Des Moines, Council Bluffs, Iowa City, Mount Pleasant, Bloomfield, Le Claire, Knoxville, Oskaloosa, and Lyons — a total of nine. And during the extra session of 1856 Mount Pleasant, Wapello, and Ottumwa were given charters.³³ In 1857 Glenwood, Winterset, Sioux City, Centerville, Clinton, Newton, Tipton, Maquoketa, Albia, Washington, Eddyville, Des Moines, Burris City, Charles City, Camanche, and Princeton received special charters — a total of sixteen special statutes.³⁴

The number of special charters granted at the session of 1856-1857 may be explained by the fact that the new Constitution, which was to go into operation in Septem-

ber, 1857, contained a provision which would prohibit the legislature from enacting special laws; and so the towns wishing special charters besieged the legislature while there was yet time. Following the adoption of the new Constitution in 1857, the General Assembly which met in 1858 passed a general act for the incorporation of cities and towns.³⁵

Thus the practice of granting special municipal charters in Iowa was brought to an end. Throughout the period from 1838 to 1858 forty cities and towns had been granted special articles of incorporation. Twenty-seven towns had been given one charter; eight had been given two charters; three had received three; and two (Dubuque and Mount Pleasant) had each been given four special charters. In all sixty municipal charters,³⁶ besides more than twice that number of amendments, had been provided by special acts for the cities and towns of Iowa during a period of twenty years.

METHOD OF SECURING SPECIAL CHARTERS IN IOWA

Special municipal charters in Iowa were granted by the legislature which alone had the power to create municipal corporations. According to the early American practice the legislature voted such charters only when requested by the people of the local area. In England, however, especially during the seventeenth and eighteenth centuries the Crown or Parliament issued charters not only upon the request of the inhabitants, but frequently in the face of bitter local opposition.³⁷

The usual method of securing a special charter in Iowa was for the inhabitants of a city or town to petition the legislature in writing. In some instances, a delegation from the locality was sent to the capital for

the purpose of presenting a charter which had been previously drafted by a committee of citizens. The proposed charter was of course formally introduced by a member of the legislature from the county in which the city was located.³⁸ But in no instance do the records of the General Assembly show that a proposed charter was initiated by the legislature — all charters being requested by the local community.

Following the introduction of a charter bill there seems to have been little uniformity in the procedure of either house in reference to its disposition. The proposed act was usually read the first time by title and ordered laid upon the table and printed. At its second reading the bill was considered in the committee of the whole, or it was referred to the committee on judiciary or to the committee on incorporations or to the members from the county in which the city or town in question was situated. Final action on the charter bill was taken after its third reading.³⁹

Special charter bills were usually passed without much discussion — which seems to suggest that they were not considered as very important legislation by the members of the General Assembly. In this connection, however, it may be noted that while the records do not show that a charter bill ever failed to pass the legislature, three such bills were vetoed on the ground of irregularities of enactment.⁴⁰

Of course the final step in the securing of a special charter was its adoption by the people of the city or town. A number of the charters contained a provision by which the instrument was to be referred to the qualified voters for their approval. But in reality the same power was given to the voters by those charters having

no referendum provision : to reject the charter it was only necessary for the people to refuse to hold the election for officers. Just how many charters failed to go into operation would be difficult to determine as the town records are in not a few instances incomplete and unsatisfactory; but that some of the charters granted by the legislature did fail to become operative is a well known fact.⁴¹ The first charter granted to Iowa City in 1841, although it contained a referendum section, did not go into operation as intended, for in 1844 by special act the charter was declared to be in full force and effect and another day was set for determining whether or not a majority of the electors were in favor of the charter.⁴²

POWER OF THE LEGISLATURE OVER SPECIAL CHARTERS IN IOWA

By the middle of the nineteenth century constitutional limitations on the legislature's power over municipal affairs became quite common. The Ohio Constitution of 1851 may be taken as an example. It provided that the legislature should not incorporate municipalities by special act.⁴³ Similarly the Iowa Constitution of 1857 prohibited the passage of special laws for cities and towns. The same section required that in "all other cases where a general law can be made applicable, all laws shall be general".⁴⁴ Furthermore, the Bill of Rights contained the provision that "the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."⁴⁵

The legislature of Ohio in 1852 passed a general law for the incorporation and government of cities in accordance with the Constitution mentioned above. Cities were

grouped into two classes upon the basis of population. The Ohio law, however, abolished all existing special charters; while the general incorporation act of Iowa, passed in accordance with the Constitution of 1857, expressly recognizes the continued existence of special charters as a means of governing certain cities.⁴⁶

The general incorporation act passed by the Iowa legislature in 1858 follows the same general scheme as the one for Ohio, namely, a grouping of cities and towns based upon a statutory classification.⁴⁷ Evidently it was the intention of the legislature to formulate a municipal code for each group in such fashion as would meet the needs of municipalities of varying population. Moreover, a later act contained the method by which cities and towns having special charters could surrender them and become incorporated under the general law.⁴⁸

According to this law the city council was empowered on the request of ten per cent of the voters to call a special election for the purpose of securing the attitude of the people on the question of charter abandonment. If at such an election a majority of the votes cast were in favor of becoming incorporated under the general law the charter was deemed abandoned to become effective upon the election of the officers of the class of city to which the corporation belonged.⁴⁹

Not only did the legislature of Iowa authorize the abandonment but it also allowed the local community to amend their special charters in case it was deemed necessary. The initiative for amendments could come either from the voters or from the council, a majority vote favoring the adoption of the amendment being necessary in either case.⁵⁰

While in all probability it was the intention of the

legislature that the special charters would continue to function, the position occupied by cities operating under such instruments has not always been clear. In 1863 the court held that no statute, general in its provisions, could apply to a municipal corporation created by special act; and in 1866 the Supreme Court of Iowa took the position that the words "any municipal corporation" did not apply to those owing their chartered existence to a special statute, thereby in effect at least overruling an earlier decision made in 1861.⁵¹ The ruling of the court in 1866 has been reiterated many times in subsequent years until, indeed, its pronouncement has become a rule, namely, that *general statutes are not applicable to cities under special charter*.⁵²

Finally, in 1876 the Iowa legislature passed an act providing that "No general law as to the powers of cities organized under the general incorporation act, shall in any manner be construed to affect the charter or laws of cities organized under special charters, and while they continue to act under such charters, unless the same shall have special reference to such cities."⁵³ Thus the legislature finally adopted the decision of the court with reference to the application of general statutes.

Even though the Supreme Court of Iowa ruled that a statute amending the charter of a particular city was null and void⁵⁴ and that a law repealing a special charter or any of its provisions would be a violation of the constitutional prohibition against special legislation,⁵⁵ other laws which in effect reach the same ends have received the sanction of the Court. So that the practice has developed in Iowa of legislating for particular cities by designating population in such a fashion as to ex-

clude other cities. A recent illustration may be taken to show the existence of such a practice.

The act provided that "any city in this state, including cities acting under special charter, or under the commission plan, where a tax upon the property of said city has been voted and paid to aid any company in the construction of a highway or combination bridge across any navigable river, forming part of the boundary of this state . . . may vote an additional tax of not exceeding five per cent . . . for the purpose of procuring funds with which to enable such city to purchase said bridge". It appears that the law could apply but to one city — Muscatine. And yet the courts hold such laws constitutional.⁵⁶ It would seem, therefore, that the legislature has rather complete control over special charter cities — the only real limitation being that such cities may not be referred to by name in the statutes.

STATUS OF SPECIAL CHARTER CITIES IN IOWA

Municipalities incorporated by special or general acts of the legislature have been held to be corporate bodies. In fact most special charters specifically declare the inhabitants of the incorporated area to be a "body politic and corporate".⁵⁷ Although a few of the charters granted to the cities and towns of Iowa simply provided that the "said city is made a body corporate, and is invested with all powers and attributes of a municipal corporation", most of them contained a more elaborate grant of corporate powers. Indeed, the most comprehensive statement of the powers of the corporation was made in these words:

That the mayor and aldermen . . . shall be one body politic in deed, fact, and name, with perpetual succession, to be known

and called by the name of the mayor and aldermen of the city of _____; and that they and their successors in office at all times hereafter, by the name aforesaid, shall be able and capable in law to have, purchase, take and receive, possess and enjoy lands, tenements and hereditaments, goods, chattels, and effects; and the same to grant, bargain and sell, alien, convey, demise and dispose of, to sue and be sued, to plead and be impleaded, in any court of justice whatever, and to make and use one common seal, and the same to alter and renew at pleasure.

In some instances the following provision was added:

And shall be competent to have, exercise and enjoy all the rights, immunities, powers and privileges, and be subject to all the duties and obligations incumbent upon and appertaining to a municipal corporation, and for the better ordering and governing said city, the exercise of the corporate powers of the same, hereby and herein granted, and the administration of its fiscal, prudential and municipal concerns with the conduct, direction and government thereof shall be vested in a mayor and board of aldermen.

According to Dillon a corporation is an artificial body created by a law with special powers, immunities, and privileges. Thus it is clear that a corporation is a legal institution, a legal entity, a legal person having a special name and enjoying only such powers as the law provides.⁵⁸ Furthermore, it may be pointed out that municipal corporations are voluntary, and that they are created as instruments of local self-government rather than as administrative agents of the State.⁵⁹ Such was the situation with regard to special charter cities.

As already pointed out the cities and towns in Iowa operating under special charters were corporations — *public* as distinct from *private*, since all corporations

created for the purpose of aiding in the administration of the civil government of the State are public in their nature. Moreover, those cities were municipal corporations, distinct from other public corporations like counties, townships, school districts, and road districts.⁶⁰

Special municipal charters, being merely enactments of the legislature, could by that body be changed, altered, or abolished at pleasure. Indeed, the special charter cities were absolutely dependent upon the legislature. The fact of having a special charter did not put them beyond the pale of legislative control, notwithstanding the existence of a strong local feeling against legislative interference.

Although these charters were quite similar in their fundamental provisions, each was a special grant from the legislature and could be amended or repealed by the legislature when necessity arose or when such action was requested by the local community. The people were powerless to change their government if the legislature failed for any reason to enact the desired amendments — although it appears that in three instances the city council had authority to alter the charter with the approval of the qualified voters,⁶¹ and in one case the council was authorized to pass upon the acceptance or rejection of a legislative amendment.⁶²

At the present time only five municipalities in Iowa remain under the charters granted to them prior to 1858 — namely, Davenport, Muscatine, Glenwood, Wapello, and Camanche. The charters of Davenport and Muscatine have been in operation since 1851; Wapello's charter was granted in 1856; and the Glenwood and Camanche charters were enacted in 1857.

These charters, however, no longer constitute the

frame of government for these municipalities; for, since 1857 when the old type of special legislation was prohibited by constitutional provision, hundreds of laws of a general character, as well as many acts intended for such cities as a class, have been made applicable to special charter cities. As a result the five cities in Iowa now operating under special charters have most of the municipal powers conferred upon cities in general as well as some special powers.

III

ELECTIONS IN SPECIAL CHARTER CITIES

ELECTIONS in cities acting under special charter varied materially from those in municipalities organized under the general law : in fact it is not probable that any two charters contained the same provisions with respect to elections. The dates varied in the different charters and elections were held at many different times.

TIME OF HOLDING ELECTIONS

Regular municipal elections for the purpose of choosing officers were as a rule held annually in accordance with charter provisions. Furthermore, such elections were usually held on Monday in the month of June, and special elections could be scheduled at any time by complying with the charter provisions relative to election notices.

Of the five special charters now in operation all provided for the holding of annual elections in the month of March, April, or September, and in four instances on the first Monday of the month. In 1897 the legislature provided that all elections in such cities should be governed by the general election laws.⁶³ At the same time, however, such cities were given blanket authority to exercise all rights, powers, and privileges of the particular chapter of the Code.⁶⁴ However, since it is a well settled principle that the making of general provisions applicable to cities under special charter does not effect a re-

peal of similar provisions peculiar to such cities, it is doubtful if elections need to be held at the time specified by the general statute.⁶⁵ Indeed, it appears that in Davenport the regular municipal election is held biennially on the first Saturday of April,⁶⁶ while in Muscatine the election is held on the first Monday in March in the even numbered years.⁶⁷ The special charter cities may, therefore, choose between the dates set by the general and special acts.

MANNER OF CALLING ELECTIONS

The special charters usually provided for the manner of calling elections, whether regular or special. During the early part of the period of special charter legislation in Iowa it was usually the duty of the council to give notice of elections; but after 1848 such duties were performed by the mayor, except in a few instances when such work devolved upon the recorder or clerk. Most of the charters required that election notices should be posted or published for at least five days previous to the election and notices for a special election for a longer period.

The charters granted to Muscatine, Glenwood, Wapello, and Camanche each provides for the posting or publishing of such notices by the mayor for the usual ten day period, while the city of Davenport was authorized to call its elections in the same manner as in the case of county officers.⁶⁸ However, the situation has not been altered materially since the general election laws were made applicable in 1897, because the courts have ruled that where the "time of a regular election is fixed by law such time is to be taken notice of judicially" and "failure to give proper notice" will not invalidate it.⁶⁹

MANNER OF CONDUCTING ELECTIONS

Provision was usually made in the charters for the manner of conducting elections although some of them in the absence of detailed regulations provided that elections should be similar to those held in townships. Election officials were named by the council, two methods being employed in their selection. During the earlier years two councilmen were chosen as judges with the recorder acting as clerk; but later when the ward system was adopted all election officials were chosen by the council from without that body. As a rule the polls were required to be open from the hours of eight or ten in the morning until four or five o'clock in the afternoon,⁷⁰ although in some instances they were to be open but from three to five hours in the afternoon.

According to the *Revised Ordinances* of Davenport the council appoints three judges and two clerks for each polling place and each alderman serves as one of the judges in his own precinct, but not more than two judges nor one of the clerks may belong to the same party.⁷¹ In Muscatine the council has similar authority and is under similar restrictions. Furthermore, no candidate for an office to be filled at the election may be one of the judges of election. In addition provision is made for filling vacancies in the election board in case of absence.⁷²

REGULAR AND SPECIAL ELECTIONS

Both regular and special elections were to be conducted in the same manner, the returns being made to the council which was authorized to decide contested elections, as well as the qualifications and election of its own members.

Special elections were allowed for a variety of purposes, among which the following may be noted : giving consent to an increase in the tax levy; authorizing special taxes; empowering the council to issue bonds; granting compensation to councilmen; ratifying charter amendments and for abandoning the charter. For a decision on these questions a majority vote was usually required.

With the application of the general election laws to cities under special charter, a degree of uniformity with regard to these matters has been attained. For example, Davenport now requires that the council shall perform such duties with regard to elections as are prescribed by the laws of the State of Iowa.⁷³ So also in Muscatine, while the ordinances with regard to elections are more detailed, the intent of the general statute appears to have been followed.⁷⁴

QUALIFICATIONS OF VOTERS

Throughout the charters the qualifications for voting varied considerably, with citizenship as the only test common to all of them. A period of residence was usually prescribed — the time varying from ten days in some charters to six months in others. Moreover, more than one-half of the charters stated that only “free, white, male citizens twenty-one years old”, having the necessary residence qualifications, should enjoy the right to vote at municipal elections. In two charters a property qualification was required for those voting on questions of levying taxes or borrowing money.⁷⁵

The charters granted to Davenport and Muscatine in 1851 may be taken as typical with regard to qualifications for voting, although the details often varied. The

former provided that "All resident citizens over the age of twenty-one years, who are entitled to vote for state officers, and who shall have been actual residents of said city ninety days next preceding said election, shall be entitled to vote for city officers".⁷⁶ The latter prescribed that "Every white male citizen of the United States of the age of twenty-one years, who shall have been a resident of the city six months, and of the ward in which he offers to vote ten days next preceding a city election . . . is entitled to vote".⁷⁷ In Camanche's charter "All legal voters" were entitled to vote at all elections.⁷⁸

POWERS OF ELECTORS

The powers of the voter in special charter cities were for the most part confined to the election of officers, granting compensation to councilmen, and accepting the original charter. In deciding questions other than the election of officers a majority vote was usually required.

In a few instances electors were permitted to vote on the acceptance of charter amendments, although in most cases the action of the legislature was considered final.⁷⁹ However, all amendments made by the council were ratified by the voters before becoming effective. The power of petitioning the legislature for amendments was permitted the electors in two charters,⁸⁰ and in a few instances the voters were allowed to vote upon the question of repealing their charter entirely.⁸¹

Muscatine's charter authorized the electors to vote on the question of borrowing money and on the acceptance of the charter from the legislature.⁸² The approval of a majority of the taxpayers was necessary to borrow money according to the charter for Davenport and the approval of a majority of the votes cast was required

for the acceptance of the charter.⁸³ In Wapello the electors could vote on the exemption of improvements from taxation⁸⁴ and a similar power was authorized for the voters of Glenwood.⁸⁵ Camanche's charter allowed a popular vote on the question of borrowing money.⁸⁶

Such safeguards on the public credit are not as necessary now as formerly, since the amount of municipal indebtedness can not legally exceed five per cent of the valuation of the real and personal property within the city. The limit of such indebtedness was fixed by the Constitution of Iowa, which was adopted in 1857.⁸⁷ However, the general statute which applies to cities under special charter still requires the approval of the voters on such matters as the issuing of bonds and the levying of special assessments.⁸⁸ Furthermore, the people living under the special charter type of city government have the right to decide by ballot whether they will continue to live under such a form.

IV

OFFICERS IN SPECIAL CHARTER CITIES

Two types of officers are usually recognized in every unit of government — those elected by the people and those appointed by some elective officer or board. Both of these types were found in the special charters in Iowa, although no clear distinction seems to have been made between those elected by the qualified voters and those who were appointed by the council or by the mayor or by the mayor with the consent of the council.

ELECTIVE OFFICERS

In the special charters granted by the legislature of Iowa, the elective principle was extended to nearly all of the important officers for which any provision was made — the mayor and aldermen in every case being chosen by the qualified voters of the city. During the period from 1838 to 1858 the tendency seems to have been to elect not only the mayor and aldermen, but also the recorder, the marshal, the treasurer, and the assessor. In some instances, however, a degree of discretion was allowed, as a few charters provided that the council could appoint subordinate officers or could direct their election by the people.

For example, Muscatine was authorized to elect a mayor, two aldermen from each ward, a marshal, recorder, treasurer, assessor, and wharf-master; and if desired by the council, arrangements could be made for

the election of other subordinate officials.⁸⁹ In addition to those officers just mentioned, with the exception of wharf-master, the Davenport charter authorized the election of one or more street commissioners.⁹⁰ The Wapello charter was rather more specific in that it required the election of a mayor, six councilmen, an assessor, recorder, treasurer, and marshal, although the council was given some discretion with respect to the method of selecting other subordinate officers.⁹¹ Glenwood's charter in this respect was just like the one given to Wapello;⁹² as was also the charter given to the town of Camanche, although in the latter case the council could provide for the election of a board of education.⁹³

The legislature in 1888 gave to all cities acting under special charter the power to elect the marshal, recorder, treasurer, collector, auditor, attorney, and engineer.⁹⁴ In 1884 special charter cities were permitted to elect three park commissioners,⁹⁵ and later the election of such officers was made mandatory in special charter cities having forty thousand population.⁹⁶

At the present time Muscatine's ordinances provide for the election of the following officers : a mayor, treasurer, assessor, police judge, aldermen, marshal, recorder, engineer, attorney, street commissioner, sexton, and park commissioners.⁹⁷ In Davenport the people elect a mayor, aldermen, clerk, treasurer, assessor, park commissioners, and a police magistrate.⁹⁸

TERM OF ELECTIVE OFFICERS

The term of elective officers was usually one year "and until the successors are elected and qualified". Annual elections were the rule, except in one instance; and all elective officers, except aldermen, served for one

year.⁹⁹ A few of the charters provided that aldermen should serve for two years, one being elected from each ward at every annual election. The provisions just mentioned applied to the cities of Muscatine, Davenport, and Camanche,¹⁰⁰ but the one year term for all elective officers was the rule in the charters granted to Wapello and Glenwood.¹⁰¹

Since the adoption of the *Code of 1897* all elective officers in special charter cities are chosen for a period of two years, with the exception of park commissioners who serve for six years.¹⁰²

COMPENSATION OF ELECTIVE OFFICERS

As a rule aldermen received no compensation except as allowed by the electors. The mayor, however, was usually paid for his judicial services the amount allowed justices of the peace, while the recorder was authorized to receive such compensation as was deemed reasonable by the council. Other elective officers were usually paid such fees as were allowed township or county officers.

The fee system of compensation seems to have been rather generally employed in the special charters. Muscatine's charter stipulated such fees as were prescribed by the ordinances and a like provision was contained in the charter given to Davenport. In the latter case, however, an alderman was to receive no "compensation for his services as such, for serving on committees created by the city council, nor hold any office or station under this charter, unless an ordinance providing for such service and compensation, and the amount of such compensation shall have been adopted by said city council, and submitted to the voters" for approval.¹⁰³ In 1857 this provision was made the subject of an amendment

which allowed aldermen such compensation as was approved by two-thirds of all the members elected.¹⁰⁴

In the charters given to Wapello and Glenwood the fees allowed township officers appear to have been the guide for compensating city officers — no provision being made for paying aldermen;¹⁰⁵ but in Camanche's charter it was specified that all officers "will be entitled to such compensation for their services and subject to such penalties and forfeitures, for violation of duty, as the ordinance may prescribe."¹⁰⁶

The general law now applicable to cities under special charter places a limit upon the compensation which a city may give its officers. In 1897 the compensation of aldermen was fixed at not to exceed three hundred dollars annually, but in 1919 this amount was doubled.¹⁰⁷ Since 1897 the mayor could not be paid to exceed fifteen hundred dollars a year; but this law was likewise amended in 1919, raising the maximum to twenty-five hundred dollars. In addition to his salary the mayor may receive fees for judicial services.¹⁰⁸

The practice of paying public officers by means of fees has always been rather unsatisfactory. In Iowa as early as 1878 an attempt was made to substitute a fixed salary for the old system of fees. This matter, however, is largely discretionary, the council having power to decide as to the method of compensating city officers.¹⁰⁹

The ordinances of Muscatine provide that the mayor shall receive a salary of five hundred dollars annually and each alderman three hundred.¹¹⁰ According to the latest available ordinances for Davenport the mayor receives fifteen hundred dollars and aldermen three hundred annually.¹¹¹ The ordinances in each case state the compensation of the other officers.

QUALIFICATIONS OF ELECTIVE OFFICERS

No definite plan seems to have been followed by the charters relative to the qualifications for elective officers. Residence in the city was about the only qualification required by all. Indeed, the period of residence was subject to considerable variation, for in some instances it was three months, in others three years. The average period, however, was one year. In addition to a residence requirement all candidates for elective offices had to be legally qualified voters.

Muscatine's charter required that every candidate for office should be a citizen of the city and a resident for one year; but to be a citizen one must have been a male citizen of the United States, twenty-one years of age, a resident for six months in the city and ten days in the ward.¹¹² In the Davenport charter different qualifications were prescribed for the mayor and aldermen. Both were required to be citizens of the United States and over twenty-one years of age; but the mayor had to be a resident of the city for one year, while a residence of six months in the State and three months in the city was required of aldermen.¹¹³ One had to be a legal voter in the city and a resident for one year in order to be eligible to an elective office, according to the charters of Wapello or Glenwood,¹¹⁴ while Camanche's charter required one to be a citizen and a resident for six months.¹¹⁵

VACANCIES IN ELECTIVE OFFICES

The council was the usual agency in the filling of vacancies, although in a few instances the charters provided that special elections were to be called for such purpose. According to one charter, vacancies, except

those occurring in the board of aldermen, were to be filled by the mayor—a rather unusual bestowal of power.¹¹⁶

The city council under Muscatine's charter was empowered to fill vacancies in any of the elective offices—such appointees to serve until the next regular election and until a successor had qualified.¹¹⁷ The charter granted to Davenport in the same year authorized a special election to fill vacancies in the office of aldermen or mayor. The charter further prescribed that the council should provide by ordinance for filling temporary vacancies in any subordinate office.¹¹⁸

The charter for Wapello authorized the council to appoint a presiding officer from their own number during the temporary absence of the mayor, but when a vacancy occurred in any elective office the council had the same authority to fill it as was provided in the charter for Muscatine.¹¹⁹ Similar authority was contained in Glenwood's charter.¹²⁰ Camanche's charter merely stated that "The city council shall have power to fill all vacancies occurring in their board or other offices, by death, resignation, or otherwise."¹²¹

No legislation on this subject appears to have been enacted for special charter cities until 1913, when it was provided that vacancies in the board of aldermen should be filled by a majority vote of the remaining members within thirty days from the time of its occurrence.¹²² This statute was repealed, however, by the next General Assembly which authorized a special election for filling such vacancies. According to the Code this statute is applicable only to such cities as have a population of twenty thousand or more, although as originally enacted it applied to all such cities.¹²³

BOND OF ELECTIVE OFFICERS

Elective officers during the early years of the period from 1838 to 1858, were not usually required to give bond. In no instance were councilmen required to give any security for the faithful performance of their duties, and in only a few cases was a bond required of the mayor. But during the latter part of the period, when the marshal, treasurer, assessor, and recorder were elected by the people, the charters provided that a bond could be required of each officer in such sum as the council deemed expedient. In any event the council was given exclusive power in determining the sufficiency and validity of the bond.¹²⁴ This gave to the council considerable power.

In the charters given to Muscatine and Camanche such officers as the council might determine could be required to give bond "with such conditions as may be prescribed, and to be approved as required."¹²⁵ The council, according to the Davenport charter, was given power to require any of the city officers to give "bonds with penalty, and security, for the faithful performance of their respective duties, as may be deemed expedient".¹²⁶ Wapello's charter provided that the "Treasurer, Recorder, Assessor and Marshal shall give such bond, perform such duties, and exercise such powers as may be required" by the council, and not inconsistent with law.¹²⁷ Similar provision was made in the charter given to Glenwood.¹²⁸

Subsequent to 1858 no general legislation on the subject of official bonds appears to have been enacted. The charter provisions above cited being rather uniform, other regulations concerning the giving of bonds are perhaps unnecessary.

OATH OF ELECTIVE OFFICERS

An oath was generally required of every city officer—the charter usually prescribing the oath which was administered by the justice of the peace, the mayor, or the recorder. Before entering upon the duties of his office each candidate was required to take an oath to support the Constitution and laws of the United States and of the State (or Territory as the case might be), and to faithfully perform the duties assigned him by the charter or by law.

The oath as mentioned above was prescribed in four of the charters now in force, namely, the ones for Muscatine, Wapello, Glenwood, and Camanche; while the one provided in the Davenport charter merely stated that officers should “take an oath for the faithful performance of the duties required of them”.¹²⁹

APPOINTIVE OFFICERS

Most of the special charters enacted before 1850 provided that subordinate officers such as the treasurer, assessor, and sometimes the recorder should be appointed by the council. In some cases the council was authorized to provide for the election of officers, prescribe their duties, and remove them at pleasure. Thus it would appear that such officers were to be appointed by the council rather than elected by the people. Several charters, however, stated that subordinate officers could be chosen by the council or elected by the qualified voters—the method to be determined by the council.

The practice of appointing officers appears to have been popular, for nearly all of the charters granted after 1850 provided for the appointment by the council of health officers, a clerk of the market, street commission-

ers, election officials, and others. The first charter to provide for the appointment of such officers was the one granted to Muscatine in 1851, and similar power was contained in each of the other charters now in operation¹³⁰ — with the exception of the one enacted for Camanche which authorizes the appointment of such additional officers as would be necessary to carry the charter into effect.¹³¹

In 1880 a general statute was enacted by the legislature giving special charter cities power to provide by ordinance for the appointment of a city marshal, or for his election by the voters, or for the abolition of such an officer and the conferring of his duties upon any other officer.¹³² Eight years later the mayor was required to appoint all policemen, whom he could remove at pleasure.¹³³

Members of the board of health were made appointive by the mayor and aldermen in the year 1882. This power of appointment, however, was not very great since the mayor is by virtue of his office a member of the board and a majority of the members must be selected from the council.¹³⁴

Ten years later a board of public works was authorized for cities acting under special charter — the members of which were to be appointed in such manner as prescribed by ordinance.¹³⁵ In 1897 the one appointive member on this board was made the choice of the mayor with the approval of the council.¹³⁶ Later, in 1907, the mayor was given full power of appointing the board of water-works trustees. At the present time this law affects only the city of Davenport, since the law was made applicable to those special charter cities having a population of thirty-five thousand or more.¹³⁷ Still an-

other statute of the same year gave to the mayor the authority to appoint one or more police matrons — such authority being discretionary in special charter cities having a population from twenty-five to thirty thousand and mandatory in those having thirty-five thousand or over. The only special charter city having any of those qualifications is Davenport.¹³⁸

The legislature in 1911 provided for the appointment of three members to the levee improvement commission by the mayor with the consent of the council — the mayor and the commissioner of the board of public works being *ex officio* members.¹³⁹ Two years later this law was amended by removing the *ex officio* member and giving the mayor power to appoint an additional member to take his place.¹⁴⁰

Thus it appears that the tendency since 1858 has been to materially enlarge the appointive power of the mayor and council. Moreover, an attempt has been made to follow to a considerable extent the principle of the short ballot, even though the number of municipal officers has been increased.

TERM OF APPOINTIVE OFFICERS

The term of appointive officers was as a rule one year. Although the council was authorized to prescribe the term for subordinate officers, the charters in most instances limited it to one year and until successors were elected and qualified. Tenure of office was usually dependent upon the pleasure of the council, and removals for cause could be made at any time. Vacancies were filled by the council.¹⁴¹

The term of appointive officers was fixed by the Davenport charter at one year,¹⁴² while that of Camanche

contained no provision as to term.¹⁴³ The other charters now in force provide that the term shall be during the pleasure of the council.

Since the law of 1897 went into effect the term of appointive officers has been fixed by ordinance at not to exceed two years.¹⁴⁴ This is true at the present time with the exception of some special boards that have been created rather recently. For example, the term of members of the levee improvement commission was fixed at not to exceed six years while members of the board of public works serve for a term fixed by the city council.¹⁴⁵

COMPENSATION OF APPOINTIVE OFFICERS

The most common method of paying appointive officers appears to have been the fee system, particularly during the early part of the period from 1838 to 1858. The amount was fixed by the council but was not in any event to exceed that paid by the township or county for similar services.

Muscatine's charter of 1851 stated that all officers "will be entitled to such compensation for their services . . . as the ordinances may prescribe."¹⁴⁶ Similar provision was contained in the Davenport charter, according to which the council was authorized "to fix the compensation of all city officers".¹⁴⁷ The three other charters now in operation also placed the matter of compensating appointive officers largely in the hands of the council.¹⁴⁸

At the present time appointive officers may be paid fees or a fixed salary in lieu of all fees — in practice the fixed salary being preferred. However some boards and commissions, both appointive and elective, serve without compensation.¹⁴⁹

QUALIFICATIONS OF APPOINTIVE OFFICERS

The qualifications of appointive officers were such as were deemed necessary by the city council. The special charters enacted for Muscatine, Wapello, Glenwood, and Camanche, each authorized the council to prescribe the qualifications of subordinate officers, while the Davenport instrument appears to have made no definite reference to the matter.¹⁵⁰

In general it may be said that the appointing authority determined the qualifications for these officers. Most of the charters, however, prescribed that in order to be eligible to any office one must be a legal voter in the city. That was a sort of minimum requirement. Since 1858 comparatively little legislation has been enacted on this subject. Indeed, the charter provisions prevail at the present time with the exception of the qualifications prescribed in the recent statutes providing for boards and commissions. For example, one must be a resident, a qualified elector in the city, and hold no other city office to be eligible to membership on the levee improvement commission;¹⁵¹ in the case of the board of waterworks trustees, members must be resident electors;¹⁵² and library trustees must be "bona fide citizens and residents of the city or town, male or female, over the age of twenty-one years".¹⁵³

BOND OF APPOINTIVE OFFICERS

The important subordinate officers in special charter cities — namely, the treasurer, marshal, and assessor — were invariably required to give bond for the faithful performance of their duties. But as previously indicated these officers were appointive only during the early years of the period from 1838 to 1858. Other appointive

officers, however, might at the discretion of the council be required to give bond — the amount being rarely fixed by the charters.

The charter enacted for Muscatine stated that such officers “as the council determine, shall give bond in such penal sum and with such condition as may be prescribed”.¹⁵⁴ Similar authority was contained in Davenport’s charter, giving the council power “to require of any or all” officers satisfactory bonds.¹⁵⁵ The charters enacted for Wapello, Glenwood, and Camanche make no reference to the subject of official bonds, but under its power to prescribe qualifications the council could probably require them.

No additional requirements of this character seem to have been enacted by the legislature until recent years. In 1907 special charter cities having a population of thirty-five thousand (applying now only to Davenport) were authorized to establish a board of water-works trustees, provision being made for the giving of a bond in the sum of five thousand dollars.¹⁵⁶

OATH OF APPOINTIVE OFFICERS

Appointive officers were sometimes required to take an oath, for in some instances all officers of the corporation were asked to take the same oath of office. Furthermore, a few charters provided that fines and penalties could be enacted by the council to enforce its observance.

No oath seems to have been required of appointive officers according to the charter of Muscatine, but the city council of Davenport could require one of all appointive and elective officers.¹⁵⁷ Wapello’s charter required that appointive officers should qualify in such manner as may be prescribed by the council;¹⁵⁸ and the

same provision was contained in the charters granted to Glenwood¹⁵⁹ and Camanche.¹⁶⁰

REMOVAL OF APPOINTIVE OFFICERS

In general it may be said that removals may be made by the appointing power. Davenport's charter gave the council power to provide for the removal of any officer created by ordinance.¹⁶¹ Appointive officers usually served during the pleasure of the council, which implied the possibility of removal at any time. The mayor appoints and may remove the chief of police.

Subsequent legislation has in one case given the mayor the power of removal. Members of the dock board may be removed by the mayor for wilfully violating any of the duties prescribed by law or in case a member ceases to have the requisite qualifications. The law also provides for a hearing.¹⁶² Furthermore, members of the board of public works may be removed for such causes as may be prescribed by ordinance.¹⁶³

V

DUTIES OF OFFICERS, BOARDS, AND COMMISSIONS

IN a previous chapter an attempt was made to present the data showing the manner in which city officers, boards, and commissions obtain their office, their term, compensation, qualifications, and other material of similar character. The present chapter will deal with the duties, powers, and functions of the more important officers and boards as prescribed by the charters, subsequent statutes of the legislature, and the courts.

DUTIES OF THE MAYOR

According to all of the special charters the mayor was the presiding officer of the council with the power of voting in case of a tie. Furthermore, he was authorized to perform many duties among which may be mentioned the following : execute all ordinances and punish all violations thereof; direct the official conduct of subordinates; appoint certain officers as provided by ordinance; sign and seal all commissions, licenses, and permits issued by the council; be *ex officio* justice of the peace; call all special meetings of the council; issue proclamations for all elections; and perform such other duties as might be prescribed by ordinance, not inconsistent with the State law.

Since 1858 the duties of the mayor have been somewhat enlarged, for the most part during very recent

years. In 1888 the legislature authorized the mayor to appoint as well as remove all policemen.¹⁶⁴ This gave the chief executive considerable power in the matter of law enforcement. In 1907, however, this was changed when the legislature created a board of police and fire commissioners for special charter cities having a population of twenty thousand. The law gave to this board the powers previously exercised by the mayor in such cities.¹⁶⁵ In the same year the mayor in all special charter cities regardless of population was authorized to appoint a police matron for each station house in which women or children are detained when under arrest.¹⁶⁶

In 1913 the mayor was given power to make appointments to the election board in case of vacancy. Such appointment was limited by the requirement that the appointee must be of the same political party as the member whose position was vacated.¹⁶⁷ Furthermore, the mayor is *ex officio* a member and the chairman of the board of health and of the levee improvement commission, and he appoints the members of the latter with the consent of the council. The mayor also has power to appoint a commissioner of public works, subject to the council's approval, and he has independent authority to appoint three water-works trustees whom he may remove for cause.¹⁶⁸

DUTIES OF THE CLERK

The duties which the clerk, or recorder as he was frequently denominated, was required to perform were generally prescribed in the charters, though it was not unusual for the council to be authorized to impose additional functions. Among the duties most frequently prescribed one may mention the following : keep a true

record of the proceedings of the council; attend all meetings; appoint a deputy and be responsible for his acts; make out and sign all tax duplicates; attest the annual financial report of the council; countersign and publish all ordinances; keep all ordinances in a book provided for them; post election notices; keep a record of elections and notify elected persons; call meetings of the council in the absence of the mayor; and sign all money orders, bonds, contracts, or deeds.

With regard to the duties of the city clerk the Muscatine charter contained very typical provisions. He was required to keep a true record of the official proceedings of the council and "perform such other duties as may be required by the council."¹⁶⁹ Davenport's charter, however, was rather detailed. It required the clerk to keep a journal of the proceedings of the council, signed by the presiding officer and the clerk; keep a record of the returns of the marshal, of all lots sold for taxes, of the street commissioner's work, of all deceased persons, a dock book for the mayor, and an order book showing the amount each officer or department was allowed.¹⁷⁰ Later, in 1857, when the charter was amended the clerk was given other duties relative to the recording of streets.¹⁷¹

Of the five special charters in force at the present time the one given to Davenport was by far the most detailed. The charters granted to Wapello, Glenwood, and Camanche were very similar in regard to the duties of the clerk and contained nothing additional to those duties already mentioned in the Muscatine instrument.

The legislature since 1858 has enlarged somewhat the powers and duties of the clerk. All claims against the city, bonds of the water-works trustees, the city plat, and

estimates for improvements are now filed with the clerk for safe-keeping and reference.¹⁷² Moreover all transcripts of city ordinances are made by the clerk, and since the organization of the board of health the clerk acts as its secretary.¹⁷³ In addition, if authorized by the council, the clerk may draw warrants, place special assessments and taxes upon the proper tax book, and perform such other clerical duties as may be prescribed by law or city ordinance.¹⁷⁴

DUTIES OF THE MARSHAL

The marshal was the peace officer of the city, being authorized to arrest all offenders against the ordinances or the peace of the citizens, and to perform such other duties as were imposed upon him by the council. In addition he was the executive officer of the mayor's court, being required to execute and return all processes directed to him by the mayor in the name of the mayor and aldermen.

Indeed, as an executive officer his duties were similar to those of a constable in a township, some of the charters providing that he should have the same power and be subject to the same regulations as constables. In other instances he was vested with the same rights within the city as the sheriff had in counties; and with the consent of the council he could appoint one or more deputies and require the aid of citizens in the performance of his duties.¹⁷⁵

Not only was the marshal in most instances the ministerial officer of the mayor's court and the conservator of the peace, but he was according to several charters *ex officio* collector of taxes with power to sell property upon which taxes were unpaid. Such was the case ac-

ording to the original charter granted to Muscatine, but by a vote of the people the charter was amended and the office of city collector was created. Since 1868 Muscatine has had its taxes collected by the county treasurer and the right to have them so collected was continued by the *Code of 1897*.¹⁷⁶

Each of the remaining charters now in operation provides that the marshal shall be the peace officer of the mayor's court, serve all processes, collect taxes, sell property for unpaid taxes, appoint deputies, and perform such other duties as may be prescribed by ordinance.

In 1880 authority to dispense with the marshal and confer his duties upon any other officer or person was given to special charter cities;¹⁷⁷ and eight years later such cities were given power to elect a treasurer and collector.¹⁷⁸ Accordingly, the city of Davenport conferred the financial duties of the marshal upon a treasurer who was required by ordinance to collect all city taxes and perform all other duties of such a character formerly under the jurisdiction of the marshal.¹⁷⁹

DUTIES OF THE TREASURER

The special charters did not usually state the duties of subordinate officers in definite terms, but authorized the council to prescribe them as the occasion demanded. In general it may be said that the city treasurer was the guardian of the city's funds, keeping separate accounts for each fund, and paying out money only upon the properly countersigned order of the council.

Indeed, most of the specific duties of the treasurer have been enumerated in legislation passed subsequent to 1858. The earliest statute appears to have been en-

acted by the Twenty-second General Assembly and gave all special charter cities power to provide for the election of a treasurer.¹⁸⁰ His duties were still subject to definition by the council, and remained so until 1897. In that year an act of the legislature required that all special assessments should be paid at the office of the collector just as any other city taxes and that when such assessments were entered upon the tax book of the treasurer they would constitute a lien bearing interest at six per cent to be collected by the city treasurer.¹⁸¹

Later it appears that some of the early charter provisions were incorporated into the general law for cities under special charter, requiring the city treasurer to keep a separate account for each of the different funds, issue tax receipts, collect special assessments, hold funds in trust to pay certificates or bonds issued in anticipation of such funds, and issue certificates that certain lands are free from delinquent taxes before being recorded and platted.¹⁸²

In 1911 the city treasurer was made custodian of the funds of the levee improvement commission and as such was required to keep a separate account of its funds, paying them out only upon the properly countersigned orders of the commission.¹⁸³ Two years later several provisions of the general law were made applicable to cities under special charter, providing that when municipal funds are placed in a bank by the order of the council such bank shall file sureties to secure the city treasurer from loss; and at the request of the treasurer, the council will pay for his bond.¹⁸⁴

In conclusion, therefore, it appears that the important duties of the treasurer are the keeping of public money and the collection of the city taxes — the latter being

peculiar to the special charter form of government. Not only does the treasurer collect and keep the money of the corporation, but he has also the authority formerly exercised by the marshal to sell property upon which the taxes remain unpaid. Furthermore, he is authorized to issue a tax deed to the purchaser of such property.¹⁸⁵

BOARDS AND COMMISSIONS

Recent years have witnessed the incorporation of several boards and commissions into the scheme of city government. In all, nine such boards have been authorized for cities acting under special charter, namely, the board of health, the board of library trustees, the board of public works, the board of water-works trustees, the levee improvement commission, the river front improvement commission, the board of police and fire commissioners, the board of park commissioners, and the dock board. Of these nine boards, four — the board of health, the board of public works, the board of water-works trustees, and the levee improvement commission — appear to have been provided especially for cities under special charter, while the other five were originally authorized for cities in general and then were made applicable to special charter cities. It may, therefore, be proper to discuss briefly the duties of each of these four boards.

DUTIES OF THE BOARD OF HEALTH

All matters of public health in special charter cities are placed under the jurisdiction of the board of health which has power to make such rules and regulations concerning such matters as may be necessary and in accordance with the ordinances of the city. The board

has authority to appoint a physician, together with such other officers and agents as may be necessary to carry their rules and regulations into effect. Furthermore, such cities are given power to provide by ordinance for the punishment by fine and imprisonment of all violations of the rules or orders of this board. In addition, the board has authority to require the use of sewers, to inspect and supervise the installation of plumbing, to order any source of filth or disease to be abated, to require buildings and premises to be put into proper condition as to cleanliness, to prevent the congregation of people when deemed dangerous to public health, to examine and destroy the sources of filth in any place, building, or vessel within their jurisdiction, to cause persons infected with contagious diseases to be segregated, and to provide for the proper care of such persons. The board is also required to make reports to the council under whose jurisdiction it is an administrative agency.¹⁸⁶

DUTIES OF THE BOARD OF PUBLIC WORKS

The legislature in 1892 authorized a board of public works for cities acting under special charter. This board was to consist of not more than three members to serve "for such length of time, possess such qualifications, receive such compensation, be removed for such causes, possess such powers, perform such duties, be governed by such rules and regulations, as may be prescribed by ordinance."¹⁸⁷ Another statute passed five years later required such cities to submit for the approval of the board of public works — chief of the fire department, or other proper officer — all plans and specifications for buildings costing over two thousand

dollars. Furthermore, the plans and specifications for all buildings to be erected within the fire limits were required to be submitted for such approval.¹⁸⁸

The latest ordinances of the city of Muscatine would seem to indicate that the council performs the duties usually assigned to a board of public works : they set forth in detail the boundaries of the fire limits, and the kind of structures that may be erected therein.¹⁸⁹

The city of Davenport, however, has a board of public works consisting of three members. Subject to the direction of the council, the board was given charge of all streets, alleys, and public places, except public parks; supervision and direction of the grading, cleaning, paving of streets; and the construction and maintenance of sewers, sidewalks, bridges, and public landings. Finally, this board was given the authority to pass upon the specifications for buildings in order to safeguard public health and safety.¹⁹⁰ The legislature in 1921 made it possible for the city council of Davenport to authorize the board of public works to supervise the construction and repair of buildings without the coöperation of the board of health.¹⁹¹

DUTIES OF THE BOARD OF WATER-WORKS TRUSTEES

The legislature in 1907 passed a law for special charter cities having a population of thirty-five thousand or more, requiring that the water-works owned by such cities should be managed by a board of trustees composed of three resident electors appointed by the mayor. The provisions of this statute can apply only to the city of Davenport.

This board was required to employ a superintendent and such other employees as would be necessary for the

operation and improvement of the water system. The law directed the board to make a daily deposit of all funds collected with the city treasurer, who was instructed to keep such money in a separate account. Furthermore, the board was authorized to incur obligations, anticipate revenues for the current year, fix uniform water rates, make and enforce proper rules for the collection of rentals, furnish the council with a schedule of water rates, make quarterly reports showing all receipts and expenditures, and at least annually report on the general condition and needs of the water-works plant.¹⁹²

DUTIES OF THE LEVEE IMPROVEMENT COMMISSION

One other important board was authorized by the General Assembly for special charter cities in 1911. Such cities were given power to establish a levee improvement commission composed of the mayor and not to exceed four other members. This board was given full supervision over all improvements of the water front along any river within its corporate limits. In order to make such improvements, bonds were authorized and the commission was given complete charge of the money raised by their sale. The commission was also given exclusive power to establish, regulate, and license ferries.¹⁹³

In 1914 Muscatine organized such a commission. The ordinance establishing it, however, seems to limit its functions to the supervision and control of the water front, including the construction of retaining walls, filling, grading, paving, and rip-rapping. Under its authority to issue bonds for such improvements, the city of Muscatine from 1914 to 1917 appears to have raised forty thousand dollars.¹⁹⁴

VI

THE ORGANIZATION OF THE COUNCIL

THE city council was by far the most important organ of municipal government under the charters — a principle which was probably carried over from the general incorporation acts. The organization of the council is a vital matter, since its character often forecasts the kind of work it will perform.

COMPOSITION OF THE COUNCIL

The council with one exception was composed of one branch or house consisting of from three to fourteen aldermen.¹⁹⁵ Between the years 1838 and 1847 the aldermen or trustees varied from three to five in number. But throughout the latter part of the period the number tended to increase, owing to the development of the ward system of representation. As a matter of fact the council had power to increase the number of wards and in that way controlled the number of aldermen which the city might have.

In addition to the aldermen, the council consisted of a mayor or president and the recorder or clerk.¹⁹⁶ The mayor was usually a member of the council, and the recorder was so considered in most of the charters before 1847. Indeed, in three charters granted after that year the recorder was a member of the council, and as before his presence was necessary to a quorum.¹⁹⁷

Of the five charters in force at the present time, four

provide that the council shall consist of a mayor and two aldermen from each ward — the fifth providing for a mayor and three aldermen from each ward.¹⁹⁸ In none of these charters was the recorder considered a member of the council.

Since these charters were made some changes have been instituted in the composition of the council. In 1897 a change was introduced into the law affecting cities under special charter having a population of twenty thousand, whereby the composition of the council was changed to one from each ward and two at large. This change at the present time affects only Davenport, while the number of aldermen in Wapello, Camanche, and Glenwood remain as provided by their charters.¹⁹⁹

The mayor is still considered a member of the council, although according to the charters he was permitted to vote only in case of a tie.²⁰⁰ To this rule there appears to be one exception, namely, when the council is filling a vacancy due to the resignation, removal, or death of one of the aldermen. Under such circumstances, according to a decision of the Supreme Court of Iowa, the mayor may vote.²⁰¹

ELECTION OF MEMBERS OF THE COUNCIL

Members of the council were generally elected annually by the voters. Aldermen or trustees, as they were sometimes called, were elected from wards — since most of the cities were divided into wards by their charter, or the power to establish wards was vested in the council. But in cities not having the ward system, aldermen were chosen at large. Vacancies were usually filled by a special election called for that purpose.

The charters of Muscatine, Davenport, and Camanche

provided that members of the council should be elected annually, except aldermen who were to be chosen for a two year period. The alderman from each ward receiving the highest number of votes in the first election under the charter was to hold for two years and the other alderman to serve for one year, after which at each annual election one alderman was to be elected from each ward for the two year term. In case of a tie vote between the candidates for aldermen from a ward at the first election, the election was to be settled by casting lots.²⁰²

On this subject, as upon many others, the charters given to Wapello and Glenwood were alike — both providing for a one year term for members of the council.²⁰³ In each of the five cities just mentioned, however, the ward system of representation prevailed, and elections were held annually. Since 1897 biennial elections have been required.²⁰⁴

QUALIFICATIONS OF MEMBERS

There was little uniformity in the charters with regard to the qualifications of council members. A period of residence, however, was in most instances required — residence not only in the State but also in the city and ward from which a member was elected. This last requirement, of course, was applicable only to the aldermen, for the mayor and other officers were elected from the city at large. Furthermore, citizenship was in many charters specified as a qualification. Members were often required to be citizens of the United States and residents of the State and of the city. Moreover, in most of the charters granted after 1850 members of the council were ineligible to any office within the gift of the

council during the term for which they were elected; and they were prohibited from being "interested directly or indirectly" in the profits of any contract or job of work done for the city.

According to Muscatine's charter the qualifications for members of the council were "white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the city" for one year next preceding the election.²⁰⁵ Furthermore, all members were ineligible to any office in the gift of the council during the term for which they were elected, and were prohibited from being "interested directly or indirectly in the profits of any contract or job for work or service to be performed for the city."²⁰⁶

The charter for Davenport required the same qualifications of council members as cited above for Muscatine, except that the period of residence in the city was reduced from one year to three months. Residence in the State for six months, however, was required.²⁰⁷ Similar qualifications were authorized by the charters of Wapello and Glenwood. Camanche's charter required a residence for six months.²⁰⁸

Subsequent to the enactment of the charters, little attention seems to have been given by the General Assembly to the question of qualifications for office in special charter cities. The general law for such cities, however, does provide that members of the council shall be ineligible to any appointive office created or the compensation of which has been increased during the term for which elected, nor shall any member be interested in any contract or job of work for the city. The charter provisions relative to qualifications appear to be in force at the present time.²⁰⁹

COMPENSATION OF MEMBERS

Compensation for members of the council was usually not fixed by the charters, although as a rule it was provided that the recorder should be paid such fees as were deemed necessary by the council, not to exceed the amount paid township officers for similar services. Moreover, for his judicial duties the mayor was to be given the same compensation as was accorded justices of the peace. But, in more than one-half of the charters no provision was made for the payment of aldermen, unless compensation was allowed by the legal voters.

From the general rule just stated there were, however, several exceptions. In two instances the charters authorized all officers to be paid for their services in such sum as the ordinances might prescribe.²¹⁰ The Davenport charter authorized the mayor to receive a salary to be fixed by city ordinance; but aldermen were to receive no compensation "unless an ordinance providing for such service and compensation, and the amount of such compensation shall have been adopted by said city council, and submitted to the voters of said city, and a majority of the votes cast are in favor of the same".²¹¹ This provision was amended in 1857 by allowing aldermen to receive such pay as may be approved by a vote of two-thirds of all the members elected.²¹² In the Wapello and Glenwood charters no provision was made for compensating council members, with the exception of the mayor.

Subsequent to 1858 considerable legislation has been enacted for special charter cities authorizing compensation for members of the council, including the mayor and aldermen.

In 1890 a statute was passed giving cities under special charter power to fix the compensation of their mayors —

such compensation varying from five hundred to fifteen hundred dollars annually depending upon the population of the particular city.²¹³ This was changed by the *Code of 1897* by fixing a limit of fifteen hundred dollars as the compensation of the mayor for all such cities regardless of population.²¹⁴ In 1919 the maximum was changed from fifteen to twenty-five hundred dollars at which it remains at the present time.²¹⁵

The compensation of aldermen in special charter cities was fixed by the *Code of 1897* at not to exceed three hundred dollars annually; but in 1919 this amount was doubled, and no changes appear to have been made since that time.²¹⁶

BOND AND OATH OF MEMBERS

Members of the council — except the recorder in a few instances — were not required to give bond, although according to some of the charters the council was authorized to fix such penalties as seemed necessary for compelling the attendance of absent members. Without exception members of the council were required to take an oath before entering upon the performance of their duties. In some instances they were required to take an oath to support the Constitution and laws of the United States and of the State (or Territory as the case might be), and to faithfully perform the duties of their office. The exact wording of the oath was not always given, nor when given was it always uniform. The oath was usually to be administered by the mayor or recorder when qualified, or by a justice of the peace.

All of the five special charters now in force in Iowa contain nearly the same wording relative to the taking of an oath by members of the council. The charters of

Muscatine, Davenport, Wapello, and Glenwood provide that such officers shall take an oath "to support the constitution of the United States, and of the State of Iowa, and faithfully and impartially to perform their duty to the best of their knowledge and ability".²¹⁷ Since 1858 the legislature has passed no additional statutes on this subject.

REMOVAL OF MEMBERS

Removal of aldermen was authorized by a few charters if the proposition was supported by a two-thirds vote of the whole number elected.²¹⁸ Indeed, one charter permitted the removal of any elective officer by the council,²¹⁹ but in no instance were the people given authority to remove officers.

No specific authority for the removal of such officers was contained in the Muscatine charter; but since all officers were "subject to such penalties and forfeitures for violation of duty . . . as the ordinances may prescribe", such an authority may have been exercised.²²⁰ An ordinance providing for the removal of "Any officer charged with a violation of his oath of office, or who refuses, or neglects to discharge the duties of his office" was passed by the city council of Muscatine in 1918. Trial by the council was provided for by the ordinance, and removal was dependent upon a majority vote of two-thirds of the whole number of aldermen.²²¹

The charters of Davenport, Wapello, Camanche, or Glenwood appear to contain no provisions which may be interpreted as authorizing the removal of any council members — with the exception of the mayor in the city of Davenport. This matter has been discussed in the chapter dealing with elective officers.

The charter provisions relative to the removal of members of the council have not been amended by legislative act nor do they appear to have been superseded by any general statutes which have been made applicable to such cities.

MEETINGS OF THE COUNCIL

The council was usually authorized to prescribe by ordinance the time for holding its regular meetings, although in several charters the time was specifically stated.

The majority of the charters authorized special meetings of the council to be called in such manner as might be prescribed by ordinance. In some instances the mayor was permitted to call special meetings and in others a majority of the council could call them. But in either case, notice had to be given to the individual members, or a notice had to be posted in some public place for a specified period previous to the time set for the meeting. All meetings of the council were public so that the people could attend at any time.

A quorum generally consisted of a majority of the members including the mayor. Moreover, in many instances the presence of the recorder was also required for a quorum.

The mayor or president as he was sometimes called was the presiding officer and during the period from 1850 to 1857 the council was authorized to choose a president *pro tem* from its own number, whose duty it was to perform the functions of the mayor in his absence.

According to the charters for Muscatine and Camanche the council was authorized to "hold meetings as it sees fit, having stated times fixed, or having provided

by ordinance for the manner of calling them.” All meetings whether regular or special were to be open to the public, and a majority of the members was necessary to a quorum. The mayor was the presiding officer, but when absent a temporary president could be chosen by the council.²²²

Davenport’s charter provided for twelve regular meetings of the council annually, at such times and places as determined by ordinance. Special meetings could be called by the mayor or any two aldermen, by notifying each alderman, the mayor, and the recorder. Such notice had to contain the time and place of meeting, as well as the nature of the business to be transacted. The charter limited the business of special meetings to that cited in the notice. As usual the mayor presided, but during his absence the board of aldermen had authority to appoint one of their number as presiding officer. The charter also prescribed that a majority of the council should constitute a quorum, but that a smaller number could adjourn from time to time, and compel the attendance of absent members under such penalties as were prescribed by ordinance.²²³

The provisions of the charters of Wapello and Glenwood with regard to the meetings of the council were very similar to those contained in Muscatine’s charter discussed above.²²⁴

No additional regulations relative to the meetings of the council appear to have been enacted by the legislature for cities under special charters subsequent to 1857 — the close of the era of special charter legislation in Iowa.

VII

POWER TO PASS ORDINANCES

UNDER the general term "ordinances" have sometimes been included all the body of law by which a corporation is governed, including the charter and the statutes, as well as the by-laws. In this country, however, the term does not include the charter or the acts of the legislature but only those regulations or laws passed by the local governing body of the corporation prescribing a permanent rule of conduct.²²⁵

NATURE OF ORDINANCES

Fundamentally it is true that the legislature of a State is the only body competent to make laws; and yet it is rather a well settled principle that it is proper for the legislature to delegate to municipalities the power to make ordinances and by-laws. Such ordinances have the force of laws passed by the legislature, and penalties imposed for the breach of such ordinances really amount to a prohibition. In general it may be said that the charters were not very explicit in prescribing the form and exact nature of ordinances, but gave the council power in general terms to pass them.

GENERAL POWER TO PASS ORDINANCES

Most of the charters granted to the council power to pass ordinances in very general terms. For example, the Muscatine charter of 1851 and the Camanche charter

of 1857 each authorized the council to “make ordinances, to secure the inhabitants against fire, against violations of the law and the public peace . . . and generally to provide for the safety, good order and prosperity of the city, and the health, morals and convenience of the inhabitants.”²²⁶ The charter granted to Davenport in the year 1851 provided, after a specific enumeration of powers, that the council should have power “to make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this act, so that such ordinances be not repugnant to, or inconsistent with the constitution of the United States and of the State of Iowa.”²²⁷ The charters of Wapello and Glenwood contained provisions very similar to Muscatine’s charter above mentioned.²²⁸

According to the general law which was made applicable to special charter cities in 1897 the council was given power to make ordinances not inconsistent with the laws of the State for carrying into effect powers specifically conferred and such as are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such cities and their inhabitants.²²⁹ This law appears to add no additional powers but merely makes more uniform the powers already conferred upon such cities.

THE PASSAGE OF ORDINANCES

The charters contained but few references purporting to lay down a method according to which ordinances should be passed. Many of the charters did, however, provide that the mayor should vote only in case of a tie — a provision that has been maintained in the law

up to the present time. Moreover, the Davenport charter prescribed that "The style of the ordinances of the city shall be 'Be it enacted by the city council of the city of Davenport.'"²³⁰ But none of the charters laid down rules and regulations as to the procedure and number of readings, or as to the veto power of the mayor, although it was customary for the requirement to be made that ordinances should be signed by the mayor and the clerk and recorded in a book kept for that purpose.

In 1897 a section of the general law was made applicable to cities acting under special charter. This statute provided that the mayor should sign every ordinance and resolution passed by the council before it would go into effect, and if he refused to sign he was required to call a meeting of the council within fourteen days and return the ordinance or resolution with his reasons for such refusal. If the meeting was not called as required, the ordinance or resolution was to become operative without his signature and the clerk was directed to record it in the ordinance book with a notation of the facts making it operative. If such meeting was called the ordinance or resolution could be passed over the veto of the mayor, upon a call for the yeas and nays, by not less than a two-thirds vote of the council. If passed the clerk would record the facts as to the vote and sign it officially as clerk.²³¹

RECORDING AND PUBLICATION OF ORDINANCES

The special charters usually contained requirements relative to the recording and publication of ordinances before they become operative. The charter of Muscatine provided that ordinances passed by the council should be recorded in a book and be signed by the mayor

and attested by the recorder, and before taking effect should be published for at least ten days in one or more newspapers printed in the city, or be posted in each ward for fifteen days.²³² In both of the charters granted to Wapello and Glenwood the period during which ordinances should be posted was ten days—the same length of time as required for publication in newspapers.²³³

Davenport's charter of 1851 contained a very detailed section dealing with this subject by providing that "All ordinances passed by the city council, shall within one month after they shall have been passed, be published in some newspaper published in said city, or a certified copy thereof, signed by the clerk, posted up at one or more public place in each ward of said city, and shall not take effect until ten days after such publication, or posting up, as above provided for. All ordinances, by-laws, rules and regulations, shall be recorded by the clerk of the city in a book to be kept for that purpose, with a certificate to each, that the same has been published in some newspaper published in said city, or a copy thereof posted in each ward thereof, and that the same is a correct copy of the original as passed by the city council".²³⁴

The general law made applicable in 1897 contains similar requirements as to the recording and publication of ordinances by prescribing that all ordinances shall, as soon as possible after passage, be recorded in a book kept for that purpose and be authenticated by the signatures of the presiding officer of the council and the clerk. And all ordinances of a general or permanent nature and those imposing a fine, penalty, or forfeiture shall be published or posted in three public places, two

of which shall be the post office and the mayor's office. When published such ordinance shall take effect from and after its publication, and when posted it shall take effect five days thereafter. Immediately following the record of every ordinance the clerk shall append a certificate stating the time and manner of publication.²³⁵

Furthermore, the council may authorize the revision and publication of their ordinances in book or pamphlet form, and such publication shall be deemed sufficient for all purposes.²³⁶

POWER TO IMPOSE FINES BY ORDINANCE

Charter provisions authorizing the council to make ordinances imposing fines and forfeitures for breach of ordinances varied considerably in the limits imposed. According to the various charters fines from ten to one hundred dollars, and imprisonment from fifteen to seventy-five days could be imposed. Most of the charters authorized either fines or imprisonment for violation of ordinances, although a few contained power merely to impose fines. In this connection it may be pointed out that the power to impose fines does not authorize a city to impose other penalties.²³⁷

The charters enacted by the legislature for Muscatine and Camanche authorized the imposition of penalties for the violation of ordinances "not exceeding one hundred dollars, which may be recovered by civil action in the name of the city or by complaint before the mayor, as in the case of a complaint before a justice of the peace, and the laws of the state in relation to carrying into effect a judgment of a justice of the peace under a complaint, shall be applied to judgments in the above cases, but the charges thereof must be borne by the city."²³⁸

Davenport's charter was more explicit in giving the council power "to impose fines, forfeitures, and penalties for the breach of any ordinance, and provide for the recovery and appropriation of such fines and forfeitures, and the enforcement of such penalties" by imprisonment if the fines were not paid.²³⁹

Wapello's charter of 1856 was similar to Muscatine's but in addition a term of imprisonment not to exceed fifteen days could be imposed.²⁴⁰ The charter enacted for Glenwood was like Wapello's except a thirty day sentence could be imposed.²⁴¹

The general statutes applied to special charter cities in 1897 authorize a fine of one hundred dollars or imprisonment for thirty days, and in prosecutions for violation of any ordinance the defendant is not entitled to a trial by jury or to a change of venue, except on appeal. Furthermore, whenever a fine and costs are imposed and not paid, the person convicted may be committed at hard labor until the fine and costs are paid, not to exceed thirty days, and in addition such fine and costs may be collected by the issuance of an execution on such judgment against any property of the defendant, which shall have the same effect and be executed in the same manner as provided by law for civil suits.²⁴²

EVIDENCE OF ORDINANCES

In general it may be said that the charters did not specify the rules according to which the ordinances should be received in evidence. Presumably all that was necessary was that ordinances be signed by the mayor and attested by the clerk in order that they be received in court as having binding force. A few charters, however, did prescribe definite requirements in this matter.

One of the charters was the one enacted for Davenport in 1851. It provided that the ordinance book with certificate of publication, or "a copy of any bye-law, ordinance, rule or regulation, with the certificate of the clerk, of the publication aforesaid, certified by the said clerk to be a true copy of such bye-law, ordinance, rule or regulation, shall be sufficient authentication to allow the same to be read or received in evidence, in all actions and suits, in any court in this State, or when said bye-laws, ordinances, rules, and regulations, shall be published in book or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places, without further proof."²⁴³

The charters of Muscatine, Wapello, Camanche, and Glenwood contained no provisions relative to the receiving of the ordinances as evidence in the courts, but in 1897 a rule was adopted for all cities under special charter when the general statutes were made applicable. The statutes referred to provided that when any city or town shall cause or has heretofore caused its ordinances to be published in book or pamphlet form, such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned, in all courts without further proof.²⁴⁴

In addition to the foregoing, it was provided in 1886 that printed copies of the ordinances published by authority, and transcripts thereof, or of any official act or proceeding recorded in any book, or entries on any minutes or journal, and certified by the clerk, shall be received in evidence for any purpose for which the originals would be received. Such transcripts were required to be furnished by the clerk.²⁴⁵

VIII

SPECIAL POWERS CONFERRED BY CHARTER AND STATUTE

WHILE municipal corporations are created for certain general purposes of civil government and local administration, there is considerable variance in the powers conferred. In addition to the general powers of such cities there are certain special powers which were frequently granted in the charters which it may be well to notice.

POWER OVER WHARVES AND DOCKS

Among the special powers frequently conferred by the charters of those cities located on the banks of navigable streams was the authority to erect wharves and charge wharfage. The charter granted to the city of Muscatine in 1851 gave the power to "have control of the landing on the Mississippi river, and build wharves and regulate the landing, wharfage and dockage of boats and all water crafts, goods, lumber and other things landed at, or taken from the same". This grant of power, however, was not to affect the rights of the State or counties, nor prevent Muscatine County from granting charters to ferries.²⁴⁶

Camanche's charter gave the city rather extensive authority over wharves, and a similar grant of power was contained in the Davenport charter by authorizing the city "to improve and preserve the navigation of the

Mississippi river within the limits of the city; to erect, repair and regulate public wharves and docks; to regulate the erection and repair of private wharves, and the rates of wharfage thereat''.²⁴⁷ Even the town of Wapello located on the Iowa River was given exclusive power "to establish the grade of wharves", but was granted no power to build them nor to fix the rates of wharfage.²⁴⁸ Glenwood received no such authority probably because located on a small creek.

All cities operating under special charters were authorized in 1897 to establish, construct, and regulate landing places, wharves, docks, piers, and basins and to fix the rates of wharfage.²⁴⁹ This law has not been changed since 1897.

In answer to the question what constitutes a wharf the Supreme Court of Iowa has declared that any structure of wood or stone upon the bank of a non-tidal stream of such shape that a vessel may lie along side of it, with its broad side to the shore is a wharf, and that a paved street extending to the edge of the water and used by vessels as a place for discharging and receiving freight or passengers is a wharf.²⁵⁰ Furthermore, a riparian owner on the banks of the Mississippi River has title only to the ordinary high water mark, for the Court has held that ownership to the soil between the high and low water marks resides in the State.²⁵¹

THE DEPARTMENT OF DOCKS

In 1913 the city council of any incorporated city or town, including those under special charter, if located on a navigable waterway, was authorized to create a department of public docks provided the approval of the qualified electors was secured. The department was to

be administered by a board of three commissioners appointed by the mayor. They were to act without compensation and serve for a term of three years. The board was given power to improve harbor facilities and otherwise provide for the handling of water craft of all kinds; to purchase or acquire by condemnation or other lawful means such property as may be necessary; to collect reasonable wharfage and tolls; to employ necessary assistants, employees, clerks, and workmen; and to let contracts for the construction of docks, levees, and wharves. Such are the provisions that may apply to the special charter cities of Davenport, Muscatine, Wapello, and Camanche, but not to Glenwood.

PROTECTION OF CITY PROPERTY FROM FLOODS

Recently a very comprehensive law of twenty sections was passed for cities, including those under special charter, giving them power to protect city property from floods by improving water courses within their limits or by constructing levees, embankments, or conduits. Such improvements were to be paid by special assessments and other taxes together with such bonds or certificates as may be issued in anticipation of those taxes.²⁵²

In 1909 special charter cities which were bounded in part or divided by a river were empowered to improve the water front and to levy a one mill tax for a levee improvement fund. If deemed necessary by the council money could be borrowed to the extent of one per cent of the assessed value of city property.²⁵³ Two years later the legislature authorized the creation of a levee improvement commission in such cities. The commission was to have full charge of the improvement of the water front. The city treasurer was made the finance

officer of the commission, the mayor was to be chairman, and the levee improvement fund was to be at their disposal.²⁵⁴ This law was further changed by the next legislature changing the composition of the board. The other four members besides the mayor were made appointable by him with the sanction of the council.²⁵⁵ Their term was prescribed by the law of 1911 and bonds in the penal sum of two thousand dollars were required of the members.

POWER OVER FERRIES

It has not been unusual for the legislature of Iowa to confer rather extensive powers upon special charter cities respecting ferries and their regulation. Indeed, the first provision of this character was contained in a charter granted as early as 1842.²⁵⁶ The present charters of Muscatine, Davenport, Wapello, Camanche, and Glenwood, however, seem to contain no express provision relative to ferries. In fact it would seem that granting to a municipality power over ferries might lead to difficulties as interfering with inter-state commerce, particularly when applied to navigable streams forming a border of the State as was the case at Muscatine and Davenport for example.

The general law previously discussed authorizes the levee improvement commission to prescribe the amount of license to be paid by a ferry for the use of public wharves; to prescribe the terms upon which a ferry may have the right to run to and from the landing; to prescribe the time during which any ferry shall operate; and to make any other "reasonable provisions regarding the operation" of such ferry.²⁵⁷ And in addition, the provisions of the general act were made applicable to

special charter cities having a levee improvement commission by authorizing it to have exclusive power "to establish, regulate and license ferries from any landing place in such city . . . to provide for the revocation of any license, and for the punishment by fines and penalties of the violation of any ordinance prohibiting unlicensed ferries, or regulating those established and licensed." Both of the above provisions were made applicable to cities under special charter in 1917.²⁵⁸

POWER OVER BRIDGES

In general it may be said that the charter provisions contained no reference to the city's power over bridges. The Davenport charter, however, gave the council power "to establish, erect and keep in repair bridges".²⁵⁹ The general municipal law relative to the control of all public bridges and culverts was made applicable to special charter cities in 1897 and is still in operation, except for a few slight changes which were made the following year.²⁶⁰ The law provides for a bridge fund, the incurring of indebtedness, and the issuance of bonds subject to the constitutional limitation for municipal debts. The law also authorized the levying of a tax to construct or aid in the building of a highway or combination bridge across any navigable river boundary of the State. This provision was amended in 1917 authorizing any city, which had voted such tax and paid to aid any company in the construction of such a bridge, to vote an additional tax to enable the city to purchase the bridge.²⁶¹ The bill for this law was introduced and fathered by the senator from Muscatine. In fact there is little doubt that the statute can apply only to Muscatine and possibly to Davenport.²⁶²

POWER OVER DRAINAGE

One of the special powers contained in the majority of the charters was the authorization to drain and fill low-lying lots. For example, the Wapello charter provided that the council "may require the owners of lots on which water becomes stagnant, to drain or fill up the same, and in default thereof, after reasonable notice, may cause the same to be done at the expense of the city, and assess the cost thereof on the specific lots".²⁶³

For many years after 1857 charter provisions prevailed in this matter, but in 1897 the legislature made an old statute contained in the *Revision of 1860* applicable to such cities.²⁶⁴ The law provided for the preservation of drainage of lands bordering upon a hollow or ravine used to carry off surface waters. Certainly any obstructions to such waterways due to grading or filling ought to be remedied and the council authorized to act. Moreover, since 1904 the provisions of the general drainage law, giving the county supervisors the right to establish a drainage district that includes the whole or a part of any city, has been applicable to cities acting under special charter.²⁶⁵ Such cities, in addition to the foregoing powers, also have authority to alter, cover, fill, or otherwise change any watercourse, to condemn private property for such purposes, and assess adjacent property not to exceed two dollars per lineal foot for a storm waterway which may be built along the street.²⁶⁶

POWER TO AID RAILROADS

The legislature in 1913 amended the general law empowering townships and cities to vote aid for the construction of a proposed railroad, by providing that the

petition necessary to put the matter to a vote need be signed by only two thousand resident freeholders of the city.²⁶⁷

Such a provision was not new in Iowa experience : a similar power had been given to a city under special charter as early as 1851.²⁶⁸ Later, by one special act in 1856 four such towns were authorized to subscribe to the capital stock of any railroad company legally incorporated under the laws of this State, and to issue bonds to aid in its construction.²⁶⁹

POWER TO MAKE CONTRACTS

Another special power frequently conferred by the legislature either by charter or by statute is that of making contracts. Practically all of the special charters in Iowa contained, among other corporate powers, the authority *to contract and be contracted with*. These provisions were very brief and contained no guiding details for the instruction of the council in their ordinance power under them.

Such details have, however, been supplied. The Thirty-fifth General Assembly enacted a provision which must be deemed a part of every contract entered into by any governmental unit in Iowa, whether the provision is inserted in the contract or not. The statute was designed for the prevention of agreements with officers on the part of contractors, and the giving of bribes, and contains reference to a forfeiture of a part of the contract price as damages to the other contracting party in case it is established that the contract was falsely made.²⁷⁰

This municipal power to contract has been applied to the making of arrangements for a water supply probably

more than to any other matter — a water supply being more vital than paving, or proper lighting, or heating facilities. The law gives express authority for the making of contracts for the purchase or erection of water-works and the creation of a sinking fund to meet such obligations.²⁷¹

In this connection an interesting case arose in the city of Cedar Rapids, in which the Court declared that an ordinance giving a corporation the exclusive right to supply the city with water was a franchise. Furthermore, that where a city granted a franchise to a corporation for a term authorized by law — in this State twenty-five years — and the conditions were accepted, that the same was a contract between the parties, a violation of which could properly be a subject of litigation.²⁷²

The interests of the city, however, have been safeguarded by the requirement that in contracts for any public improvement the contractor shall, before receiving payment, show that all sub-contractors and workmen have been fully paid. This provision of the general act was made applicable to special charter cities in 1897.²⁷³

POWER OVER PUBLIC PROPERTY

One of the powers usually given in the special charters was that of acquiring property. Indeed, such a power is considered incident to a municipal corporation. Moreover, the council was generally authorized to secure such property by right of eminent domain. In addition to the power of acquiring real property, such cities were in some instances empowered to erect and repair market houses, work-houses, hospitals, public halls, and city jails.²⁷⁴

Such were the charter provisions that formed the basis for later legislation. It is true, however, that although the charters of the cities which are in operation at the present time contained meager powers of this character, the power of a municipality to acquire property is so inherent as to leave little doubt as to its existence.

Subsequent to 1857 considerable legislation granting special charter cities authority in express terms to acquire property has been enacted by the legislature. For example, the Twenty-fourth General Assembly empowered such cities to establish a board of public works with authority to purchase and provide for the condemnation of land for "parks, commons, cemeteries, crematories, hospital grounds, natatoriums or public baths For establishing, laying out, widening, straightening, narrowing, extending and lighting streets, avenues, highways, alleys, landing places, public squares, public grounds, public markets or market places and public slaughterhouses For any other purpose, where such purchase or condemnation is herein, or in the charters of such cities, or may hereafter be, authorized."²⁷⁵

The general law relative to the power of cities to establish and maintain public libraries was first made applicable to special charter cities in 1897,²⁷⁶ and five years later some of its provisions were amended.²⁷⁷ The law as it appears to-day provides for a board of library trustees who shall employ a librarian, assistants, and other employees, condemn real estate for the erection of a library building, make annual report to the council, and fix the rate not exceeding five mills for the support of the library.²⁷⁸

In 1907 all cities having a population of fifty thousand

or over were authorized to erect a city hall and purchase the ground therefore.²⁷⁹ Six years later the law was amended so as to allow all cities of thirty-five hundred population, including cities acting under special charter, to have the same power.²⁸⁰ The law provided that a city hall may be erected and used for general community purposes, including an assembly hall, auditorium, public hall, armory, council chamber and offices, fire and police station, or for any one or more of such purposes. The council was given power to regulate its use and fix the rental when used for other than municipal purposes.²⁸¹

In addition to the above powers such cities have authority to provide for municipal markets, work-houses, jails, bath-houses, and play-grounds. Furthermore, the legislature in 1915 authorized all cities — including those acting under special charters and commission government having a population of twenty thousand — to purchase or lease for educational purposes a tract of land outside the city limits for a school garden or school farm, and to erect buildings and to provide managers and equipment for the purpose of providing a summer home for pupils of the city who may wish to continue their study all the year round. Legislative intent was mentioned in that the purpose of the statute was “to develop in the state of Iowa the educational principle and work commonly comprised in the name ‘Park Life’, as exemplified experimentally and discussed educationally and sociologically in this state.”²⁸²

In 1897 all special charter cities located on the Mississippi River — Davenport, Muscatine, and Camanche — having public grounds formerly set apart for levee, warehouse, or other public purpose, were given power

to use such grounds for other purposes upon terms and conditions fixed by the council.²⁸³

POWER OVER LIBRARIES AND MEMORIAL BUILDINGS

The legislature in 1897 made the provisions of the general law relative to public libraries applicable to cities under special charters regardless of their population. This statute, consisting of eleven sections, appears to give rather complete authority on this subject, providing for a board of library trustees with extensive powers for the condemnation of grounds for the location of and taxation for public libraries.²⁸⁴

Following the close of the World War numerous efforts were made to commemorate the sacrifices of the veterans. In 1919 the legislature of Iowa passed a law relative to memorial buildings for soldiers, sailors, and marines. This statute authorized counties, cities, and towns—including those under special charter—to erect or purchase and equip such a memorial building “commemorative of their military and naval service, and which shall be given an appropriate name, and shall have special accommodations or provisions for soldiers, sailors, nurses, and other persons who are or have been in the military or naval service of the United States.” The issuance of bonds was authorized, and to retire them a tax of not to exceed five mills for a period of not more than fifty years could be levied.²⁸⁵

POWER OVER PARKS

Nearly all of the special charters gave the council power to acquire property for the use and benefit of the corporation. But, on the other hand, few charters made any specific mention of the acquisition of grounds for

parks — probably because the need for public parks was not felt in Iowa in the early days. Indeed, it was not until about twenty-five years after the close of the period of special incorporation that the specific power relative to parks was granted to any cities in the State.²⁸⁶

This law gave cities and incorporated towns, including cities under special charter, the power to elect three park commissioners with complete control over parks, although questions of taxation for the purpose of purchasing grounds must be submitted to the people. The city council fixed the tax rate when authorized by a popular vote, and when collected the tax was to be paid on the order of the commissioners who were required to keep an accurate account of all such funds and to give bond. At the present time nearly all of the provisions of the general law for cities with respect to parks are applicable to cities under special charter.²⁸⁷

POWER OVER SCHOOLS

Before 1846 the charters did not give city councils any power to control public schools; but in that year one of the charters gave the council “power whenever they deem it expedient, to provide for the establishment and support of public schools within said city, and to pass all ordinances necessary and proper for the good government of the same.”²⁸⁸

Of the five charters in force at the present time, four give specific authority for the regulation of public schools. The Muscatine charter of 1851 authorized the council “To provide for the establishment and support of schools in the city, when there has been a legal vote of the citizens in favor thereof, and to provide for the government of the same.”²⁸⁹ The charter enacted for

Davenport in the same year gave the council power "to establish, support and regulate common schools";²⁹⁰ while the Wapello charter of 1856 contained no reference to the matter whatever. But Glenwood's charter, which was in so many respects similar to the one enacted for Wapello, provided that "The city council is hereby invested with full control and authority over the common schools in said city, and shall receive and disburse all the school tax levied upon property within said city, or received from the school fund for distribution therein".²⁹¹

But by far the most extensive reference to the power of the city council over schools was contained in the Camanche charter of 1857 which reads as follows :

That the city of Camanche shall constitute one permanent school district, not subject to alteration by the school fund commissioner, and shall be subject to the control of the city council of said city, who shall provide for the adequate support and maintenance of common schools in said district, and so much of the code of Iowa as require regular meetings of each school district on the first Monday of May and October of each year, and so much thereof as requires the election of trustees in each school district, is hereby declared inapplicable to said district. The city council of said city shall by ordinance provide for the appointment or election, as they may consider most proper, of a board of education in said district, and shall invest in said board the necessary power for the proper care and management of the common schools in said district, the employment of teachers and the supervision of schools, and provide for the taking and returning to the proper officers, as required by law, of the number of persons in said district between the ages of five and twenty-one years, and the performance of such other duties as may seem necessary for the proper discharge of the duty hereby imposed upon said council.

That the city council of said city shall furnish all necessary additional school houses for the support of common schools in the said district, and for that purpose shall levy and collect, in the same manner as other moneys for current expenses in said city, such sum of money as may be necessary therefor, and for the necessary repair and improvement of the same; but the sum levied in any one year shall not exceed the rate of one-half of one per cent. on the assessment of such year, and the city council are authorized and directed, when necessary, to borrow in anticipation of such tax, the amount necessary for the purchase of school lots and the erection of school houses thereon, but not to exceed the sum of ten thousand dollars, and to give the bonds of the city therefor, to be repaid by the tax so levied and collected as aforesaid for the purpose aforesaid.

That the city council shall have power, by their order on the school fund commissioner of the county of Clinton, to receive from him, for the use of said district, all monies appropriated to said district from the school fund; and in addition thereto, shall in each year levy and collect, in the same manner as other monies for current expenses, such further sum, not to exceed in any one year the rate of five mills on each dollar for the assessment of such year, as may be, with the fund received from the school fund, adequately to provide for the payment of necessary teachers' wages and incidental expenses in maintaining common schools in said city, arising the current year.

That all monies received by the city council from the said school fund commissioner, or collected in pursuance of any tax by this act authorized, shall be paid into the city treasury, and a separate account thereof shall be kept by the treasurer and recorder, and no monies shall be drawn therefrom only to be appropriated to the special purpose for which the same was received or collected, and shall only be paid on order in which said purpose is stated; and the city council shall provide for the publication, at least once in each year, for the information of all persons, of a full statement of all receipts and expendi-

tures for school purposes, during the current year, and which shall show the number of schools kept, the number of teachers employed, the wages paid, the whole number of persons in attendance, and the time such schools have been held during the current year.²⁹²

In 1862 the legislature authorized the formation of independent school districts in "any city or town, containing within its surveyed limits not less than three hundred inhabitants".²⁹³ The law authorized the election of a board of directors composed of a president, vice president, secretary, treasurer, and three directors. Such a law would not now be construed as applying to cities under special charter; but as previously pointed out the courts at that time were not entirely clear on the applicability of general statutes to such cities. As a matter of fact the Supreme Court of Iowa in 1861 seems to have been of the opinion that the words "any city" in a law ought to be so interpreted.²⁹⁴ At any rate, at least one city under special charter seems to have organized as an independent school district in accordance with the statute of 1862, for in 1866 the legislature legalized the action of the board of directors of the independent district of Muscatine in levying a tax for the support of the schools.²⁹⁵

The common schools in cities and towns under special charter do not appear to be under the jurisdiction of the council — the *Revised Ordinances* of Muscatine and of Davenport containing no reference to schools.

OTHER SPECIAL POWERS

The legislature in 1913 gave cities and towns, including cities acting under special charter and the commission plan of government, power to appropriate money

out of the general fund for the payment of dues in the league of Iowa municipalities and in addition they may pay the actual expenses of two delegates to the meetings of the league.²⁹⁶

In 1917 the city council was authorized to appoint three persons, residents of the municipality and especially fitted for community work to coöperate with the council in all matters relating to community improvements, child welfare, and social and recreational activities. These persons were to be known as a Community Civic Congress. The members of this congress serve without compensation.²⁹⁷

IX

POLICE POWER

MUNICIPAL corporations are created not only for the purpose of administering local affairs but also to serve as agents for the State. The powers which they exercise are delegated to them, many of which are known as police powers. Thus under the police powers of a municipality nuisances, fires, health, markets, liquor, gaming, and the like are regulated and controlled. In fact, the exercise of police power by a governmental agency is primarily for the general welfare of the people.

THE REGULATION OF OCCUPATIONS

Special charters in Iowa not infrequently authorized the corporation "to regulate", or "to license and regulate", or "to license, regulate and tax" certain avocations, and "to licence, regulate and prohibit" shows, exhibitions, billiard tables, and games of chance. The Muscatine charter of 1851 empowered the city council "To exercise exclusively the power to provide for the license, regulation or prohibition of exhibitions, shows and theatrical performances, billiard tables, ball and ten pin alleys and places where any games of skill or chance are played, but this power extends to no exhibition of a properly literary, scientific or artistical character; and when the laws of the state permit license for the sale of intoxicating liquors, that subject shall be within the exclusive authority of the council. . . . and it may revoke

or suspend any of the licenses above mentioned when it considers that the good order and welfare of the city require it." Cartage and drayage were also placed within the council's power to regulate or license.²⁹⁸ Muscatine secured an amendment to her charter in 1857 authorizing the licensing of auctioneers in such sum and under such conditions as might be imposed by the city council.²⁹⁹

In this regard the Davenport charter, secured in 1851, contained probably the most extensive grant of power of any of the special charters by providing that the council should have power "to license, tax, and regulate auctioneers, transient merchants, retailers and grocers, taverns, ordinaries, hawkers, pedlars, brokers, pawnbrokers and money changers; to license, tax, and regulate hackney carriages, wagons, carts and drays, and fix the rates to be charged for the carriage of persons, and for the wagonage, cartage, and drayage of property; to license and regulate porters, and fix the rates of portage; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to tax billiard tables, restrain, prohibit and suppress tipling houses, dram shops, gaming houses, bawdy and other disorderly houses".³⁰⁰ The three other charters which are still in operation — while containing somewhat similar grants of power — are rather more meager in their provisions.³⁰¹

Since 1857 a considerable body of legislation has been made applicable to cities acting under special charter, so that the charter provisions have been rather largely superseded in regard to the license and regulation of occupations. For example, the legislature in 1897 made a number of sections of the Code applicable to cities

under special charter. These sections authorize the regulation, licensing, and taxing of hotels and eating houses and the sales of transient merchants, auctioneers, bankrupt and dollar stores; peddlers, house movers, bill-posters, itinerant doctors, itinerant physicians and surgeons, junk dealers, scavengers, pawnbrokers; to provide for the examination and licensing of engineers of stationary engines; to license and regulate all keepers of intelligence or employment bureaus.³⁰² Such cities were also authorized to regulate, license and tax or prohibit billiard saloons, billiard tables, pool tables, and all other tables kept for hire; bowling alleys, shooting galleries; to suppress, restrain, or prohibit all gambling games or devices; to regulate, license or prohibit circuses, menageries, theaters, theatrical exhibitions, except lectures on scientific, literary, or historical subjects; to suppress, restrain or prohibit disorderly houses, houses of ill fame, opium or hop joints, or places resorted to for the use of opium or hasheesh; to regulate, license, or prohibit the sale of domestic animals at auction in the streets or other public places.³⁰³ In 1907 the further power was given "to regulate, define, tax, license or prohibit public dance halls, skating rinks, fortune-tellers, palmists, and clairvoyants." The same statute gave the city council the power to regulate the construction of billboards and their location, and conferred authority to license and tax the owners or persons maintaining them.³⁰⁴ Power to suppress, restrain or prohibit begging on the streets or other public places was given in 1917.³⁰⁵

POWER OVER INTOXICATING LIQUOR

Many of the special charters, particularly during the latter years of the period from 1838 to 1858, permitted

the council "to regulate by good and wholesome" laws all taverns, groceries, and other places where spirituous liquors were sold. Moreover, the council was given full and exclusive power to grant or refuse licenses to taverns, innkeepers, and retailers of liquor in quantities of less than one quart. Although the council was given exclusive authority over the sale of liquor within the corporation, such regulations could not be repugnant to the laws of the Territory or the State.

Muscatine's charter stated that "when the laws of the state permit license for the sale of intoxicating liquors, that subject shall be within the exclusive authority of the council, and it may at all times prohibit the retail of the above liquors unless such prohibition would be inconsistent with the law of the state at the time existing; and it may revoke or suspend any of the licenses above mentioned when it considers that the good order and welfare of the city require it."³⁰⁶

The charter enacted for Davenport gave the council power "to license, tax, and regulate . . . grocers, taverns . . . restrain, prohibit and suppress tipling houses, [and] dram shops".³⁰⁷ The Wapello charter of 1856 also gave power to "prohibit the retail of intoxicating liquors, unless such prohibition would be inconsistent with the laws of the State, at the time existing, and the said Council is authorized to revoke or suspend any of the above licences" when the welfare of the city required it.³⁰⁸ Glenwood's charter of the following year contained a very similar provision,³⁰⁹ as did also the charter enacted for Camanche.³¹⁰ The power of such cities over the sale of liquor was, therefore, largely one of internal administration subject to State law.

The whole of the intoxicating liquor law of the State

was made applicable to special charter cities by the *Code of 1897*.³¹¹ Since that time many amendments have been made to it, especially since 1913.³¹² But since the adoption of the eighteenth amendment to the Constitution of the United States and the subsequent congressional legislation, it would seem unimportant to trace the State legislation on this subject or to explain its provisions.

POWER OVER HEALTH

Other police powers contained in the charters had to do with the regulation of health. Of the fourteen charters granted to municipalities in Iowa before 1846, only six contained provisions relative to the regulation and control of public health; while of the forty-three charters enacted after that year all but seven contained specific sections authorizing such regulations.³¹³

The Davenport charter of 1851 authorized the council "to make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws for that purpose, and to enforce the same within five miles of the city".³¹⁴ The charter given to Muscatine by the same legislative body empowered the council to make ordinances providing for "the health, morals and convenience of the inhabitants."³¹⁵ Wapello's charter of 1856 gave the council power to make "all necessary ordinances in relation to the cleanliness and health of the city".³¹⁶ Glenwood's charter of 1857 authorized the making of "all necessary ordinances in relation to the cleanliness and health of the city; and may require the owners of lots on which water becomes stagnant to drain or fill up the same".³¹⁷

Such were the charter provisions under which these

cities acted until the passage of a law in 1882 empowering special charter cities to establish boards of health. This statute of twenty sections was introduced into the legislature by the representative from Scott County—primarily, no doubt, for the benefit of the city of Davenport.³¹⁸

This law provided that a board of health consisting of from three to five members be appointed by the mayor and aldermen of the city. The mayor was also made member of the board and its chairman. Moreover, a majority of the board were to be members of the council. The board was authorized to appoint a physician; to make rules and regulations respecting nuisances, sources of filth, cases of sickness, and for the preservation of the public health; to make rules, regulations, and orders concerning sewer connections, plumbing, milk and food inspection, collection and disposal of garbage, condemnation of impure wells and cisterns, and report to the council ordinances for carrying such rules and regulations into effect. The intent of the law was the creation of a board with the particular administrative function of safeguarding the health of the community and at the same time allowing the city council supervision over such matters with power to pass ordinances for their enforcement. The board was really an administrative arm of the council.

In 1917 the law was amended authorizing the appointment of a permanent quarantine officer with the rank of captain.³¹⁹ In most regards the law has been practically unchanged since its passage. Two years later the legislature made all of the provisions of the housing law applicable to special charter cities.³²⁰ This law was designed as a health measure, so that it is proper that the

boards of health should have a large influence in its administration. The law is very detailed, consisting of one hundred and eight sections, and prescribes minutely the amount of light, ventilation, window space, water supply, and even the color of cellar walls.

Since 1897 the council in special charter cities has had authority to establish an infirmary for the accommodation of the poor of the city and to provide for outdoor relief and the maintenance of a public bath house. Such action by the council is, however, dependent upon the declaration of the board of health that such is "essential to the preservation of the public health".³²¹

Another measure relative to health was passed by the legislature in 1917 giving authority to the council to adopt ordinances prohibiting the sale of milk or cream from cows unless tested for tuberculosis by a competent veterinarian. Such ordinances were authorized not only to prohibit such sale to the inhabitants of the city, but also to provide a penalty for violation.³²²

POWER OVER HOSPITALS

Special charters in Iowa usually contained power for the regulation of public health, but not until 1851 was there specific authority for the founding of hospitals. The first charter to contain such an authorization was the Davenport charter of 1851 which gave the council power "to establish hospitals, and make regulations for the government of the same."³²³ There seems to have been no specific authorization in regard to the erection or maintenance of hospitals in the charters given to Muscatine, Wapello, Camanche, or Glenwood.

General laws, however, have been passed by the General Assembly since 1857 giving authority to special

charter cities regarding hospitals. In 1870 provision was made whereby any city could condemn lands for "the use of public squares, parks, commons, cemeteries, hospital-grounds, or any other proper and legitimate municipal use".³²⁴

This statute seems to have been used largely as the basis for the law as it appears in the *Code of 1897* in the chapter on cities under special charters.³²⁵ Power was thus granted for the purchase or condemnation of lands within or without the territorial limits of the city for hospital grounds. Payment for such property was from the general fund.

POWER OVER CEMETERIES

Another police power which the legislature authorized in a number of special charter cities was that of control over burial grounds. While it appears that none of the special charters now in force contain such provisions, some legislation for the benefit of such cities was subsequently enacted.

A law made applicable to cities acting under special charter in 1897 gave the corporation power to regulate the burial of the dead and to provide places of interment either within or without the city limits. The statute gave to the city council all the powers conferred upon township trustees in this matter, together with authority to establish and regulate crematories. Moreover, if any body was interred contrary to regulations the council was empowered to cause such body to be taken up and reburied in accordance with the regulations of the city council.³²⁶

In accordance with the provisions of this law the city council of Muscatine passed rather extensive ordinances

relative to cemeteries and crematories.³²⁷ These ordinances set forth in detail the necessary procedure for the purchase of burial grounds, their survey, and sale to private persons. Furthermore, schedules for "perpetual care" — varying from thirty to two hundred and fifty dollars — and for the digging of graves are enumerated. No crematory may be constructed within fifty feet of any street, lane, alley, or adjoining property, nor may it be erected on a plot of ground less than three hundred feet square. Moreover, every crematory erected and operated contrary to the provisions of the ordinance was declared a nuisance — a subject which will be discussed in the following section.

POWER OVER NUISANCES

Another police power — one that may include a number of items — which was frequently granted to the charter cities was authority over nuisances. As an example of such a specific delegation of power, the provisions of the Davenport charter of 1851 may be cited. In this act the legislature authorized the city to make regulations "to declare what shall be a nuisance, and to prevent, remove or abate the same".³²⁸

According to Dillon, "acts and things which may be the subject of the exercise of the power have . . . in some jurisdictions, been divided into three classes. *First* : those which in their nature are nuisances *per se* and are so denounced by the common law or by statute. *Second* : those acts and things, including certain trades and occupations, such as slaughter-houses, livery stables, laundries, soap and glue factories, &c *Third* : those which in their nature are not nuisances, but may become so by reason of their locality, surroundings, or the man-

ner in which they may be maintained, managed, conducted, &c.”³²⁹

The charter provisions in regard to nuisances were not very specific. Indeed, it appears that considerable litigation must of necessity have resulted, were it not for the fact that the charters contained rather complete lists of items which might be regulated or abated. Thus such subjects as sale of liquor, disorderly houses, gambling, billiard halls, animals running at large, disturbances and parades, circuses, shows, and exhibitions, slaughter-houses, and the keeping of dogs were frequently enumerated in the charters—a circumstance which would lessen the necessity for an interpretation of the term *nuisance*.

Subsequent legislation has in part cleared away much of the uncertainty in this regard. In 1897 the provisions of the general law were made applicable to cities under special charter. The law as it appears at the present time may be quoted as follows:

They shall have power to prevent injury or annoyance from anything dangerous, offensive or unhealthy, to cause any nuisance to be abated, to provide for the destruction of weeds and other noxious growths upon any of the lots and parkings therein, and to provide for the assessment of the cost thereof to the property; to provide for the immediate seizure and destruction of tainted or unsound meat or other provisions; to establish all needful regulations as to the management of packing and slaughter-houses, renderies, tallow chandleries, and soap factories, bone factories, tanneries, and manufactories of fertilizers and chemicals, within the limits of such cities or towns; to regulate and restrain the deposit and removal of all offensive material and substances, and the engendering of offensive odors and sights therefrom, so as to protect the public against the same; to establish and regulate slaughter-houses; and, in cities

having five thousand or more inhabitants, to build and control the same. In addition to any right of abatement of any public or private nuisance, they shall have the right to prohibit the same by ordinance and to punish by fine or imprisonment for the violation thereof.³³⁰

In 1913 the legislature by statute provided that the emission of dense smoke within the corporate limits of any special charter city of sixteen thousand or over — now applying to Davenport and Muscatine — might be declared a nuisance.³³¹ Furthermore, the statute authorized the council to provide by ordinance for the abatement of the smoke nuisance by fine, imprisonment, or action in the district court. In addition, rules and regulations for smoke inspection and its prevention and abatement were authorized.³³²

Other police powers were expressly conferred upon special charter cities by the *Code of 1897* — provisions taken from the general law and made applicable bodily. Under these provisions billiard saloons, gambling, theaters, circuses, shows, gambling and disorderly houses, disturbances, parades, animals running at large, and dogs were placed under the control and regulation of the council.³³³

The courts have held that the power to abate nuisances gave the city no authority to punish by a fine one who maintained a nuisance.³³⁴ Furthermore, if the council orders the removal of that which is not in fact a nuisance, the person causing its removal may be held individually liable for damages.³³⁵ These decisions of the Court in Iowa no doubt are responsible for the specific provisions which of late appear in the law granting authority to abate nuisances and punish violations by fine or imprisonment. Punishment, however, may be

imposed by a city vested with authority to restrain disorderly houses, and the Court has held that the burden of proof rests with the accused showing that his presence was innocent and lawful.³³⁶

The courts have been rather strict in their interpretation of charter provisions and statutes. An interesting case in this connection arose in 1880 — the ordinance in question providing that any one keeping a house of ill-fame “shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined”. The city according to the law had power “to suppress and restrain disorderly houses”. The municipality claimed that the punishment provided would tend to suppress and restrain such nuisances, but the Court held that such suppression must be direct and in attaining that end the ordinance may provide for closing such houses and removing the inmates. But an ordinance placing a fine on such offenses was an indirect method — a method already provided by State law — and therefore was a power not delegated to cities.³³⁷

POWER OVER BUILDING

The charters contained almost no authorization on the subject of the erection of buildings which could be used as a basis for regulatory ordinances. The only reference contained in the charters had to do with the erection of wooden structures which would increase fire hazards. These will be mentioned under the section dealing with fire control.

In 1897 a law became effective requiring the approval of the board of public works, chief of the fire department, or other proper city officer for all plans and specifications of buildings costing over two thousand dollars

and for all buildings to be erected within the fire limits. Furthermore, such approval had to be secured of the plans for the plumbing, drainage, ventilation, and electric wiring, after which a building permit would be issued.³³⁸

Another provision of the general municipal law which was made applicable in the same year permitted the council to enact ordinances providing for the repair, removal, or destruction of any building which was dangerous or likely to fall — the expense incurred to be covered by a special tax on the property.³³⁹

The legislature in 1913 made possible the adoption of a building code in such cities. The ordinances passed could then provide for the districting of the city and for the establishment of reasonable rules and regulations for the erection, reconstruction, and inspection of buildings of all kinds within their limits.³⁴⁰

The General Assembly six years later made it possible for cities under special charter to establish building lines on private or public property for the purpose of promoting public health, safety, order, and general welfare. The law provided that after the building line was proposed for any street, hearings would be held by the council at which objections could be made.³⁴¹ This law gave such authority to cities of the first and second class, including cities under special charter, and would, therefore, apply to Wapello and Camanche even though they have less than two thousand inhabitants.

Another enactment of the legislature relative to the erection and maintenance of buildings was passed by the Thirty-eighth General Assembly in 1919 and is known as "The Housing Law of Iowa".³⁴² This statute covers over twenty-three pages in the session laws and

covers every phase of the housing problem — dealing with the subject under eight headings. These divisions of the law are as follows: General Provisions, in which the scope of the act and a definition of terms are given; Light and Ventilation; Sanitation; Fire Protection; Alterations; Maintenance; Improvements; and Requirements and Remedies. The legislature two years later amended this law by providing that in special charter cities of more than fifty thousand population, having a department of building inspection in charge of a person giving his entire time to the supervision of building construction, the council may provide that the duties of the board of health and health officer with regard to building inspection and regulation may be charged to the building inspector.³⁴³

POWER OF INSPECTION

Under the police power it will be proper to deal with power not only to inspect certain commodities and performances, but also the establishment of weights and measurements.

Of the charters now in force the one issued to Davenport contains the most elaborate provisions on this subject and may be quoted as follows :

The city council shall have power . . . to establish standard weights and measures, and to regulate the weights and measures to be used in the city, in all cases not otherwise provided for by law. To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work; to provide for the inspection and weighing of hay and stone, coal, the measuring of charcoal, fire wood and other fuel to be sold or used in the city; to provide for, and regulate inspection of tobacco, beef, pork, flour, meal

and whiskey, in barrels; to regulate the weight, quality and price of bread to be sold and used in the city.³⁴⁴

In addition to these specific powers such cities had considerable authority clothed in the general terms of the charter. For instance, the council in Muscatine had authority to appoint "such other officers as it deems advisable, and may prescribe their duties".³⁴⁵ Under this provision the city of Muscatine has appointed several inspectors — of food, milk, and plumbing.³⁴⁶

The first legislation of this character applicable to special charter cities enacted since 1857 seems to have been passed by the General Assembly in 1888. The statute forbade the use of electric wires in any building, whether public or private, until inspected and approved by a competent electrician appointed by the council.³⁴⁷

Inspection of buildings in the process of construction was authorized for special charter cities in 1897,³⁴⁸ and in the following year the council was empowered to appoint an inspector, and prescribe his duties. This inspector seems to have about the same functions as the one provided by the law of 1897, except that he is to perform his duties under the supervision of the board of public works in cities of less than six thousand and as directed by the State board of health in cities having over six thousand inhabitants.³⁴⁹ This was changed in 1921.³⁵⁰ In 1897 inspection was authorized for steam-boilers and magazines,³⁵¹ and in 1915 further provision was made for inspection of all electrical installations.³⁵² In the latter year the uniform weights and measures law was amended by providing that produce weighed by a scale bearing the State inspection card issued by the dairy and food commission shall not be required to be reweighed by an ordinance of any special charter city.³⁵³

POWER OVER FIRES

Most of the special charters contained specific provisions enabling the council to pass ordinances for preventing the destruction of property by fire. As a matter of fact, only about ten charters failed to grant such power. Furthermore, the council was usually authorized to prohibit the discharge of firearms, to regulate the storage and sale of gunpowder, and to organize fire companies and provide them with all necessary fire extinguishing apparatus.

In order to carry out these provisions more effectively the council in most instances was given power to prevent by ordinance the erection of any building of wood more than ten feet in height in any block, if such construction was opposed by the owners of three-fourths of the lots in the square.

Muscatine's charter as well as that given to Camanche provided for the establishment and organization of fire companies and the furnishing of engines and other apparatus. The keeping and sale of gunpowder was placed under the regulation of the council. Furthermore, the council was authorized to provide that "no building of wood shall be erected within such parts of the city as may be designated, and to declare such buildings a nuisance and cause their removal."³⁵⁴

The charter enacted for Davenport at the same session of the legislature contained more extensive provisions by authorizing the regulation of chimneys and flues and the "storage of gunpowder, tar, pitch, rosin, and other combustible materials".³⁵⁵ The provisions of the charters of Wapello and Glenwood were identical and authorized the council "to establish and organize fire

companies and to provide them with fire engines and other apparatus . . . regulate the keeping and sale of gunpowder within the city.’³⁵⁶

No legislation on this subject seems to have been enacted for special charter cities until the year 1897, when such cities were empowered to prohibit and regulate the piling of lumber or wood within one hundred yards of any dwelling house;³⁵⁷ to regulate and control the building of “chimneys, stacks, flues, fireplaces, hearths, stove-pipes, ovens, boilers, and all apparatus used for heating purposes, and the use of lights in stables, shops, and other places”; to prohibit the use of fireworks; to require the construction of fire escapes to buildings, and regulate them; and to cause the removal of unsafe buildings.³⁵⁸

Such cities were also given power to regulate the transportation and storage of gunpowder, inflammable oils, and other combustible materials, to provide or license magazines for their storage, and to prohibit their location and maintenance within a given distance of the corporate limits.³⁵⁹

The *Code of 1897* also made another provision of the general law applicable to special charter cities by permitting them to make regulations against danger from accidents by fire or electrical apparatus and to establish fire limits and within such areas to prohibit the erection of buildings except of fire-proof material and to provide for the removal of any structure contrary to such standards. This was amended in 1913, allowing the city to collect the costs of such removal from the owner.³⁶⁰

The last provision of importance that has been made applicable to special charter cities with reference to fires deals with the subject of pensions for disabled and re-

tired firemen. All of the provisions of this law apply to "all cities and towns, including cities organized under special charter, now or hereafter having an organized fire department".³⁶¹

PUBLIC SAFETY

The charters usually allowed the city council to prohibit animals from running at large; to prohibit dogs and swine from being kept within the city; and to prevent racing and immoderate driving on the streets. To enforce the ordinances that should be made under these provisions certain penalties could be prescribed. That the running at large of animals was considered a nuisance is evidenced by the fact that the voters of Scott, Cedar, and Jones counties were authorized by special act in 1851 to vote in order to decide whether sheep and swine were to be allowed at large.³⁶²

Although no specific authorization of this character seems to have been contained in the charter of Muscatine, the one enacted for Davenport at the same session gave the council authority to tax dogs or prevent them from going at large; to prohibit the discharge of "fire-arms, and the racing and immoderate driving of horses, drays, carts, carriages, wagons, or other vehicles" in the city.³⁶³

Wapello's charter, enacted in 1856, authorized that city to "generally provide for the safety, prosperity and good order of the city"³⁶⁴ and to prohibit animals from running at large; while Glenwood was merely authorized to "prohibit hogs from running at large within the city".³⁶⁵ Camanche's charter was equally barren.³⁶⁶

In addition to the powers mentioned above such cities

have been given authority over motor vehicles and trains, both of which have developed in Iowa since these special laws were enacted. Furthermore, the provisions of the general statutes relative to the keeping of dogs and other animals have been made applicable.

In 1897 special charter cities were given the same authority over dogs as was enjoyed by other municipalities, with power to regulate, restrain, license, or prohibit their running at large. Provision was also made for their destruction when found contrary to ordinance.³⁶⁷ Moreover, the law gave authority to restrain and regulate the running at large of cattle, horses, swine, sheep, and other animals and for impounding and selling them when found at large.³⁶⁸

In this connection it may be pointed out that the Supreme Court of Iowa has held that animals not permitted to run at large, upon coming into the city, may be taken up and dealt with in accordance with the ordinances even though the owner lives outside the corporation where such restrictions do not pertain.³⁶⁹

Furthermore, a city council may make the running at large of dogs which are unmuzzled a misdemeanor on the part of the owner and punishable accordingly.³⁷⁰ Another provision, intended to promote public safety, is the statute giving authority to prohibit the use of barbed wire to enclose any lot within the corporate limits and to provide for the removal of such as may already be in use.³⁷¹

From this it appears that the scanty provisions of the special charters have been in effect superseded by more recent legislation relative to the regulation of conveyances. In fact, it appears that little if any of the provisions with regard to public safety as contained in

the old charters are really functioning at the present time.

Since 1897 all special charter cities have power "to regulate, license and tax all carts, wagons, street sprinklers, drays, coaches, hacks, omnibuses, and every description of conveyance kept for hire". Prices of service, width of tires, street stands, and lights for such vehicles may also be subject to regulation by ordinance.³⁷²

The Thirty-sixth General Assembly enacted what is known as the "jitney" bus bill, applying its provisions to cities and towns and including those under special charter and commission government.³⁷³ Such cities may also regulate the driving of stock on the streets and prevent and punish fast or immoderate driving within the city limits.³⁷⁴

Further authority to promote the public safety has been given to all special charter cities of over five thousand inhabitants to regulate the speed of trains within the corporate limits and to require suitable gates to be erected and maintained at railroad crossings or in place of gates may require viaducts to be built.³⁷⁵

X

FINANCIAL POWERS OF SPECIAL CHARTER CITIES

IN a previous chapter an attempt was made to enumerate some of the special powers which cities under special charter were permitted to exercise. The real core of a municipality's power, however, is its authority over matters of money. Indeed, it may be said that "a municipal corporation, like the general government and the state, must have power to raise money to enable it to perform its public functions, since otherwise it would be a body without life, incapable of acting, and serving no useful purpose."

SOURCES OF REVENUE

According to McQuillin in his treatise on *Municipal Corporations* there are five general sources from which a municipality as usually organized may derive its revenue; and in this regard the special charter cities of Iowa are no exception. These sources are as follows :

First. In its capacity as a *quasi-private* institution, it may obtain income and profit from the management (e. g., water works, lighting plant), and sale of corporate property.

Second. In its capacity as a state agency or local sovereignty, it may secure revenue from (1) general *taxation*, (2) issuing *licenses*, (3) *wharfage* dues, and (4) the general exercise of the *police power*, including *fin*es and *penalties* for the violation of ordinances, fees for the inspection of boilers, elevators

Third. The city may derive revenue from *granting franchises* or privileges to gas, street car, railroad, underground service, electric telegraph, telephone, etc., companies.

Fourth. The municipality may obtain moneys by *borrowing*

Fifth. In the exercise of the power of *special taxation or assessments for local improvements*.³⁷⁶

POWER TO BORROW AND LOAN MONEY

Of all the financial powers granted to the council throughout the period of special charters, that of borrowing money was probably the most important and the most fully regulated. After 1850 nearly every charter contained provisions allowing the council under certain restrictions to borrow money. Indeed, each of the five charters now in force expressly authorize the borrowing of money under certain restrictions. In this connection the courts have usually held that a city has no inherent power to borrow money; nor is such authority to be implied from the conferring of power to incur indebtedness — a ruling which probably accounts for the uniformity of the express power in the charters with regard to borrowing.³⁷⁷

Muscatine's charter of 1851 empowered the city council to borrow money "for any object in its discretion", if at a regularly notified meeting the citizens by a majority of two-thirds of the votes given determined in favor of the loan.³⁷⁸ Davenport was given power to borrow for such purposes as the council deemed conducive to the welfare of the city, provided the approval of a majority of the taxpayers was secured. The charter contained another limitation which stated that the annual interest on the city debt should not exceed one-half of the revenue

derived from the yearly tax on real estate and personal property.³⁷⁹

The charter granted to Wapello at the extra session of the legislature in 1856 seems to have neglected to authorize the city to borrow — a defect that was remedied the following year by an amendment investing the council with “authority to borrow money, for any purpose, not exceeding twenty thousand dollars”. The approval of the legal voters for such a program, however, had to be secured.³⁸⁰ The charters enacted for Glenwood and Camanche were very similar to Muscatine’s mentioned above, except that the approval of a simple majority of the votes cast was sufficient according to Camanche’s charter.³⁸¹

To facilitate the borrowing of money cities operating under special charters were in many instances authorized to issue bonds. Particularly was this true when a city was given authority to subscribe to the capital stock of a railroad company or a plank road company.³⁸² The amount of such bonds was usually limited, as was also their duration and maximum rate of interest. From ten to twenty years was the period generally specified, and the interest rate was in most instances left to the discretion of the council.

No one of the charters in force at the present time specifically authorize the issuance of bonds, although an amendment to that end was secured by Davenport in 1855. Evidently the city council had already issued bonds without authorization, for the act stated that the “debts heretofore created and bonds issued . . . to the sum of one hundred and twenty-five thousand dollars, are hereby declared legal and binding”. Furthermore, this law gave the council power to issue bonds, but

limited that authority by requiring that no debt could be created the annual interest on which exceeded three-fourths of the ordinary yearly revenue, unless approved by the voters of the city.³⁸³

Subsequent to 1858 a number of provisions of the general law relative to borrowing money have been made applicable to cities under special charter. Thus, in 1897 such cities were given power to issue bonds for the payment of the cost of establishing water or gas works and electric plants including the cost of the land condemned upon which to locate them. These bonds were to mature within twenty years; to be in sums of not less than one hundred nor more than one thousand dollars each; and to bear interest at not more than six per cent payable annually or semi-annually.³⁸⁴

Special charter cities in the same year were also given power to issue bonds for street improvements and sewers; for the funding and refunding of municipal indebtedness; and for the purpose of raising money in anticipation of special taxes : in fact, all of the provisions of the general law relative to bonds were made applicable to such cities.³⁸⁵ Moreover, bonds may be issued for the maintenance of a fire department;³⁸⁶ for a disposal plant;³⁸⁷ river front improvement;³⁸⁸ street grading;³⁸⁹ and other street improvements which are necessary or desirable.³⁹⁰

POWER TO INCUR INDEBTEDNESS

The authority usually conferred upon municipalities to incur financial obligations, including the power to issue bonds and certificates, is liable to very serious abuse. The proneness of cities to throw the burden of unwise expenditures upon posterity is sufficient reason

for the various schemes which have been devised for curbing this tendency.

The Constitution of Iowa which went into effect in 1857 was one of the first to limit municipal indebtedness. It declared that "No county or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation — to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness."³⁹¹

Most State Constitutions now provide that cities may not become indebted beyond a certain limit. The Iowa document, however, attempts to guard the city against becoming involved in any manner or for any purpose in excess of the limit so fixed; and the Supreme Court has decided that these constitutional limitations should be strictly construed. For example, in 1876 the Court held that "No indebtedness, for whatever purpose created, is exempted from the prohibition of the constitutional provision limiting the indebtedness which may be incurred by municipal corporations".³⁹²

The constitutional limitation just mentioned does not confer upon a city any power or right to incur indebtedness — such authority being given either by charter or by statute. Even though the Davenport charter provided for unlimited indebtedness the Supreme Court held that the new Constitution repealed such power — that the city was not empowered to contract an indebtedness beyond the five per cent limit. That the city was already indebted beyond that amount was declared immaterial so long as prior indebtedness was not impaired.³⁹³

Whenever a city has become indebted to the limit prescribed by the Constitution, it is frequently a problem to provide for current expenses. Therefore the courts have usually held that a city may anticipate its revenues for current expenses and that such liabilities will not be considered as debts within the meaning of the Constitution. The tax thus anticipated, however, must have been actually levied, and the creditor must agree to look only to the revenues so anticipated for payment.³⁹⁴

In this connection an interesting case arose in Cedar Rapids in 1901. The city was already indebted beyond the constitutional limit; but, being desirous of securing the city water-works, it made a contract obligating itself to pay exorbitant water and hydrant rentals in consideration of which the water plant was to become city property. The Court held that such an agreement was designed as an evasion of the constitutional limitation of indebtedness and so declared the whole proceedings null and void.³⁹⁵

Another phase of this matter may be pointed out in connection with a difficulty which arose in Davenport. In 1872 the legislature permitted all cities and towns to authorize the construction and operation of water-works by private persons or corporations, provided the matter was approved by the voters or by a four-fifths vote of the council. On December 4, 1872, an ordinance was passed by the city council of Davenport by which the city entered into a contract with a company to supply water as provided by law. An attempt was made to restrain the city from carrying this ordinance into effect; but the Court held that where a contract is made pertaining to its ordinary expenses — which are within

the limits of its current revenues and such special taxes as it may legally levy — such a contract does not constitute “the incurring of indebtedness” within the meaning of the Constitution.³⁹⁶

State Constitutions frequently contain provisions that “*at the time when indebtedness is incurred provision shall be made for the levy or collection or for the levy and collection of an annual tax sufficient to pay the interest and principal.*”³⁹⁷

In the Iowa Constitution, however, there is no such provision, but the courts have laid down a number of rules relative to the collection and payment of indebtedness which may serve as well. In an early case decided by the Supreme Court it was held that even if a city can not pay its indebtedness out of the funds raised by one year's levy, because of a restriction on the amount of such levy, that the party having a contract with the city is entitled to ultimate payment.³⁹⁸ Moreover, the fact that a judgment, when given can not be enforced because of a lack of power to levy a tax, will not be considered a defense to avoid payment.³⁹⁹

In addition, the courts have held that mandamus is the proper remedy to compel authorities to levy a tax when it is their duty to do so, but that when such tax can not be levied by virtue of a limit on taxing power, mandamus will not be awarded. Therefore, it would appear somewhat difficult for a judgment creditor to collect against a municipal corporation when it is already exercising its taxing power to the limit.⁴⁰⁰

COLLECTION, DISTRIBUTION, AND CARE OF FUNDS

The marshal, as pointed out in another connection, was usually *ex officio* collector of the taxes of the cor-

poration, although during the latter part of the period from 1838 to 1858 the office of collector was in some instances separately created. The subject of the collection of the city revenue will be discussed fully in connection with the power of taxation.

The special charters were usually not very detailed with respect to the distribution and care of municipal funds, although some mention of such duties were generally made. For instance, Muscatine's charter of 1851 imposed upon the council the duty of auditing all claims against the city, providing for the safe-keeping of all public money, and prescribing the manner of its withdrawal from the treasury. Furthermore, all city officers were made accountable to the council, which was to publish annually a statement of all receipts and expenditures, "and of all debts owing to and from" the city.⁴⁰¹

The charter enacted for Davenport authorized the council to appropriate money, provide for the payment of the debts and expenses of the city, and to borrow money on the credit of the corporation. Furthermore, the council was required to publish annually "a full and complete statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended, showing the entire indebtedness of said city, and also the amount of road work, from whom received, money paid instead of work, the disposition of said work and money."⁴⁰² The charters given to Wapello, Glenwood, and Camanche were very similar in this respect to Muscatine's charter — authorizing the council to provide for the safe-keeping of all funds, the manner of disbursing them, the auditing of all claims, and the publishing of the annual statement.⁴⁰³

Since 1857 numerous alterations and additions have been made relative to the financial powers of special charter cities. In 1888 a law was passed requiring each officer, board, or committee to file with the clerk thirty days before the beginning of each fiscal year a statement of the necessary labor, supplies and materials needed during the next fiscal year, together with the estimated cost.⁴⁰⁴

Furthermore, the city council is required by law to make appropriations of all expenditures at the beginning of each fiscal year, and any expenditure in excess of such appropriation is illegal. Nor shall appropriations exceed the legal revenue for the year. A city may, however, anticipate its revenue and also bond or refund its outstanding indebtedness.⁴⁰⁵

The general law relative to the keeping of municipal accounts has been made applicable to cities acting under special charters. The statute is quite elaborate and was designed no doubt for the purpose of establishing a uniform system of accounts which would give a true statement of all city funds. According to this law the records must show all receipts, vouchers, and other documents necessary to prove the validity of each transaction. Separate accounts must be kept for each appropriation and an annual report of the financial condition of the city must be published at the close of each fiscal year. Moreover, a certified copy of the annual report is required to be forwarded to the Auditor of State.⁴⁰⁶ A further check on city finances is added by the fact that the State Auditor appoints the examiners of municipal accounts who audit and report once in two years on the financial condition of cities of three thousand or over. Any city of less than three thousand may,

however, have its accounts examined by applying to the Auditor of State.⁴⁰⁷

Loans and warrants are two methods in addition to bonds which may be used for the purpose of anticipating revenue, but the amount of such loans or warrants must not exceed one-half of the revenue to be derived from the particular fund affected.⁴⁰⁸ No warrant must be drawn unless voted by the city council, nor for an amount in excess of one thousand dollars.⁴⁰⁹ The clerk, recorder, or auditor is required to furnish the council with a sworn statement or list of all warrants drawn during the previous month, showing the object, amount, and the account to which each warrant is applied.⁴¹⁰ Provision is also made for the punishment of officers for participating in any diversion of city funds.⁴¹¹

The general law relative to bonds has been made applicable to special charter cities. The statute provides that such cities may settle, adjust, renew, or extend their legal indebtedness or any part of it, in the sum of one thousand dollars or more and they may fund or refund the same and issue coupon bonds therefor. The law sets forth the form of such bonds and provides for their numbering, issuance, registration, and sale. Such bonds are paid out of taxes which cover principal and interest when due;⁴¹² and no action questioning the legality of bonds shall be brought later than three months from the time they were ordered issued by the proper municipal authority.⁴¹³

The finances of the city are guarded by providing for limitation of action on unliquidated claims and claims for personal injury — a period of three months applying in both cases.⁴¹⁴ Provision is also made whereby a city may protect itself by suit against any person or cor-

poration through whose alleged negligence the city has been held liable.⁴¹⁵

Furthermore, the law provides that all public money shall be deposited in a bank approved by the council, the rate of interest is specified, and a bond with sureties is required from the bank receiving the money. The treasurer may not loan or use for private purposes any of the funds, but the council may use public money in securing bonds for the treasurer.⁴¹⁶

The funds of the city are kept by the treasurer in a number of separate accounts, although the council under certain restrictions may order a surplus from one fund to be placed in another. These various funds may be enumerated as follows : general fund, grading fund, improvement fund, sewer fund, fire fund, road fund, library fund, bond fund, bridge fund, park fund, water fund, and such other funds as the council may establish by the levying of a special tax. Special charter cities are authorized to levy twelve different special taxes, and each is to be kept in a separate account or fund. The legislature in 1923, however, authorized any special charter city upon the abandonment of its charter to transfer any funds on hand to the appropriate funds under the new organization in such proportions as the council might decide.⁴¹⁷

XI

TAXATION IN SPECIAL CHARTER CITIES

TAXATION, although by far the most important source of governmental support, is of rather recent origin — developing, as a matter of fact, first in the cities and towns.⁴¹⁸ At the present time, however, taxation is considered as an attribute of sovereignty with its exercise vested rather completely in the legislative department of the State.

The State, having authority to tax for general purposes, may delegate to municipal corporations the power to levy upon the same property within its limits for the support of the local government⁴¹⁹ — which means that the power to levy taxes is not inherent in municipalities.⁴²⁰

POWER TO LEVY TAXES

One of the primary reasons for the incorporation of municipalities was to facilitate the levying and collecting of taxes. Indeed, the importance of the taxing power as a function of the cities under special charter is best shown by the fact that every charter and more than one-half of the amendments thereto conferred this authority in specific terms — every charter containing provisions for levying and collecting taxes of a general nature, usually with special taxes of various kinds. General taxes were usually limited to a certain per cent on the property within the corporation subject to taxation for State and county purposes. A number of the charters made no provision for special taxes — a fact which prob-

ably accounts for the number of amendments dealing exclusively with that subject. Indeed, such amendments were necessary owing to the recognized principle that without a specific grant of power a city is helpless. The purposes for which special taxes could be levied were mentioned in the charters or the amendments and in most instances were for the purpose of grading, altering, paving, or improving streets, or for other public works.

In general it may be said that the council had the power to levy general and special taxes and to equalize them; that the assessor had the authority to assess the property, both real and personal; and that the marshal as collector had the power to collect taxes by sale of property if necessary.

The provisions of the five charters now in force appear to be quite similar with regard to taxation. Muscatine's charter authorized the council to levy taxes not to exceed one-half of one per cent on the value of all property within the city liable for State and county taxes. In 1853 an amendment was secured whereby the limit was raised to one per cent.⁴²¹ The charters of Davenport, Wapello, Camanche, and Glenwood each authorized a tax not to exceed one-half of one per cent on value of real and personal property;⁴²² but in 1855 Davenport secured permission to levy a specific tax on the assessment roll whenever a deficiency appeared in the city revenue after payment of the ordinary expenses, to pay the semi-annual interest on the debt already created.⁴²³ Furthermore, Wapello by its charter as amended in 1857 was given power to levy a special tax of not to exceed three mills to pay an indebtedness already incurred.⁴²⁴

In addition to the general taxes just mentioned each one of the charters authorized the levy and collection of a road tax, and provided that all road taxes should be paid to the city officer designated by the council.

The charter provisions relative to assessment and collection being very similar, the method prescribed in the Muscatine charter may be taken as a type.⁴²⁵ It provided that the latest county assessment roll should form the basis of assessment, but the city assessor was empowered to add any property omitted by assessing the same himself.

Subsequent to 1858 the law relative to taxation for cities and towns under special charter has been considerably expanded. These statutes are contained in some eighty sections of the *Compiled Code*, over sixty of which are provisions of the general municipal law which have been made applicable by the legislature. It is evident, therefore, that the law on this subject is practically the same for cities and towns incorporated under the general statutes and under special charter.

In 1897 the General Assembly authorized the council in special charter cities to levy an annual tax of not to exceed eight mills for the purpose of defraying both general and incidental expenses, but the aggregate of such levy together with all levies for special purposes was not to exceed sixteen mills in any one year — excluding city and district sewer tax, road district tax, any tax levied to pay the principal or interest on any bonds issued by such city, any tax levied to pay judgments, or taxes authorized for library, park, or bridge purposes. These figures were changed to ten and twenty-six mills respectively by an act of the legislature in 1923.⁴²⁶

In addition to the general taxes mentioned above, the charter cities are authorized to levy and collect taxes for special purposes as follows :⁴²⁷

1. *Grading fund*, not to exceed three mills.
2. *Improvement fund*, not to exceed three mills.
3. *Sewer fund*, not to exceed five mills.
4. *Fire fund*, not to exceed three mills.
5. *Road fund*, not to exceed two mills.
6. *Library tax*, not to exceed five mills.
7. *Tax for water, gas, electric plants*, not to exceed five mills for operating.
8. *Tax for water, gas, electric plants*, not to exceed five mills to pay amount due any individual or company operating such works.
9. *Bond fund*, sufficient to pay interest to accrue before next annual levy on funding or refunding bonds outstanding and to pay principal on such bonds.
10. *Water, gas, or electric light and power bonds*, tax to be used in payment of principal and interest of bonds used for construction of such works.
11. *Park tax*, not to exceed two mills.
12. *Special bridge tax*, for construction of bridges.

Furthermore, such cities are authorized to levy not only general and special taxes, but also certain special assessments upon property for improvements.

In 1900 special charter cities, as well as all cities of the first class, were authorized to levy in addition to the regular water tax, a tax of two mills for the purpose of creating a sinking fund to purchase a water-works or pay indebtedness already incurred for water-works now owned.⁴²⁸ Special taxes could also be levied in such cities for a street improvement fund and a sewer fund to pay for any such improvements that may have been

made by assessing the cost to real property within the city.⁴²⁹ In 1909 the legislature authorized special charter cities to levy a special tax of one mill for a waterfront improvement fund to pay for building retaining walls and the like where such cities are bounded in part by a river.⁴³⁰

From time to time provisions of the general law have been made applicable also to special charter cities authorizing a special tax for the fire department,⁴³¹ special tax for highways outside the city limits,⁴³² authorizing the anticipation of the park tax,⁴³³ levying a tax for cleaning streets and for a city bridge fund, a dog tax, a road tax on agricultural land, and several provisions relative to labor on the roads.⁴³⁴

METHOD OF ASSESSMENT

The method or manner of making assessments was usually not specified in the charters — probably because the duties of subordinate officers were not enumerated but were subject to definition by the council. In a few instances, however, the charters provided that property should be assessed “in such manner and under the same regulations as are or may be provided by law for the assessment . . . of county taxes”.⁴³⁵

The Muscatine charter of 1851 limited the power of the assessor by providing that “the latest county assessment roll shall form the basis of the assessment, but the city assessor may add thereto any property omitted, assessing the same himself.”⁴³⁶ Two years later an amendment to the charter removed this dependence upon the county, giving the city assessor full authority to make an assessment of the property of the city.⁴³⁷ In 1857 the charter was further amended so as to require

the expenditure of all taxes for improving streets and alleys in the wards from which it was collected. This provision made it necessary for the assessor to make separate returns from each ward.⁴³⁸

The charter granted to Davenport was rather detailed with respect to the assessment of taxes and its provisions may be quoted as follows :

The city council shall have power and authority to levy and collect taxes upon all taxable property, real, personal and mixed, within the city which value shall be ascertained by the assessor of said city; to provide by ordinance the time for taking such assessment, when the same shall be returned to the city clerk, and also provide for the assessing of property that may have been omitted or overlooked or otherwise not returned by said assessor, also the time when said clerk shall make out and deliver to the marshal of said city, a copy of said assessment together with the tax due or assessed, which said copy, shall be sealed with the common seal of said city, with a warrant for the collection of the taxes so assessed, signed by the mayor, and clerk of said city. The city council shall have power to correct or equalize any erroneous or injudicious assessment.⁴³⁹

The Wapello charter authorized the levy and collection of taxes "on all property within the City which is liable for State and county, taxes, including improvements on such property, and it may exempt such improvements when it is so determined by a vote of a majority of all the votes of the city". The charter also provided that all corporate property should be exempt from taxation for State, county or other purposes — a rather unnecessary restriction.⁴⁴⁰ The charters enacted for Glenwood and Camanche contained similar provisions.⁴⁴¹

As previously stated, the general power to levy and

collect taxes rests with the council, the time of making assessments being determined by ordinance. The assessed or taxable value of all property in special charter cities must be provided by the council. Furthermore, where all property — except such as is listed and valued by the Executive Council — is assessed upon its full value or upon a certain percentage of its full value, the levy upon all such property valued and returned by the Executive Council shall be on a like percentage of the valuation.⁴⁴²

In special charter cities all assessments and taxes levied by the council, except as otherwise provided by law, are required to be placed by the auditor, clerk or recorder upon the proper tax book which is ruled to correspond with the assessment books. From this an abstract of the tax may be made and the consolidated tax apportioned among the different funds according to the number of mills levied for each.⁴⁴³ Moreover, the law made applicable in 1913 to cities under special charter provides for the assessment of stocks and moneyed capital.⁴⁴⁴

COLLECTION OF TAXES

Throughout the period during which special charters were granted in Iowa, the city marshal was usually *ex officio* collector of taxes, with power to make a personal demand of each resident charged with a tax, and he had authority to sell property if the taxes were not paid within a certain time.

The Muscatine charter authorized the marshal, or such other person as the council might appoint, to collect all taxes in the city. But before proceeding to make such collection he was required to give thirty days notice

“of the assessment and levy of the tax, and the rate thereof in general terms without names or the description of the property”. During this period of thirty days appeals for correction could be taken to the council sitting as a board of equalization. After the expiration of the period the mayor was authorized to fix his warrant to the tax list, requiring the taxes to be collected.

If the tax was not paid within a reasonable time the collector was given power to “distrain upon personal property liable to taxation, and sell the same as the county collector may sell in like cases.” Taxes on real property became a lien thereon, and could be sold if the taxes were not paid within four months after the publication of the notice, but a “demand of the tax must be made a reasonable time before sale if the supposed owner be found in the city.”

Such sales were required to be held at public auction following a preliminary thirty day notice and the one “who bids to pay the amount due for the least quantity of land will be the highest bidder, and the manner of ascertaining the portion purchased shall be as directed in the state revenue law now or hereafter existing.”

After the sale of such property the collector was authorized to execute and deliver to the purchaser a deed running in the name of the State, although the owner could redeem the property within one year from the date of sale by payment of the purchase price and interest at ten per cent, together “with any other taxes paid by the purchaser, which payment may be made to the purchaser, his agent or the treasurer of the city.”⁴⁴⁵

The Davenport charter contained rather more drastic provisions relative to the collection of taxes. Only twenty days were allowed for the payment of taxes after

the published notice after which they became delinquent. Furthermore, if the owner had not redeemed the property within two years from the date of sale by paying the purchase price together with interest at fifty per cent per annum, a deed would be issued to the purchaser by the mayor.⁴⁴⁶

Charter provisions for Glenwood and Wapello relative to the collection of taxes were almost identical with those in the Muscatine document, except that no arrangement seems to have been made for the redemption of property sold for taxes. The Camanche charter followed very closely the Davenport instrument on this subject.⁴⁴⁷

Since the close of the period during which special charters were enacted, a considerable body of the general municipal law relative to the collection of taxes has been made applicable to the charter cities. But, on the other hand, a few statutes have been enacted for the special charter cities as a class.

Of this latter type of legislation one may cite the law of 1876 which gave such cities power to provide by ordinance when general or special taxes and assessments would become due, and the rate of interest they would bear, not to exceed twenty-five per cent annually. Furthermore, all such cities now have power to collect taxes by sale if necessary although the interest rate has been reduced.⁴⁴⁸

Taxes in the charter cities may be collected by the marshal or city collector or by the county treasurer, as may be determined by the council. But when property at a tax sale remains unsold for lack of bidders the collector has authority to adjourn the sale to some other time within a period of two months.⁴⁴⁹

Accordingly, taxes upon real estate constitute a lien thereon enforceable against all persons except the State, and taxes on personal property are a lien upon the real estate of the owner. Moreover, taxes on a stock of goods are a lien thereon even when sold in bulk and may be collected from the owner, purchaser or vendee, but the property of the seller if sufficient must meet the obligation. Enforcement of such a lien may be by suit.⁴⁵⁰

The statutes also provide in detail for a tax receipt which shall be made out by the collector or treasurer and delivered to the taxpayer. This receipt shows a description of the property and its assessed value, and in case it has been sold for taxes and not redeemed, the date of the sale, to whom sold, the amount of the taxes, the interest, and costs. And as an additional safeguard, the council may require that taxes for previous years must be paid before those for the current year.⁴⁵¹

Since 1897 the council in all charter cities has definite authority to act as a local board of review, as had been the case in cities and towns organized under the general incorporation act. The board is required to meet on the first Monday of April at the office of the city clerk and to hold daily sessions until its work as a board of equalization is completed. But such work must be finished by the first day of May. All changes in the valuation of property are made by the assessor at the direction of the board, and whenever any valuation is raised proper notice must be given. Persons aggrieved by such action may make either oral or written complaint to the board stating the errors and the facts that may lead to their correction. If the final action of the board is not satisfactory, an appeal may be taken to the district court which has full power to fix the assessment.⁴⁵²

Frequently the revenue from a particular tax may exceed the amount needed — a condition which would necessitate the diversion of the money from its original purpose. To meet this situation the legislature has provided that whenever a tax has been levied to pay a judgment against the city, the principal and interest of funding or refunding bonds, or for any other special purpose, the tax shall not be held invalid if the revenue received exceeds the amount sought, but the surplus shall be paid into the general fund. This is an exception to the rule that money raised for a special purpose constitutes a distinct fund in the hands of the treasurer and remains so until the obligation is discharged.⁴⁵³

In addition to the above, the council of all special charter cities has been given power to relevy and reassess any taxes erroneously assessed which shall have the same effect as if done at the proper time without any irregularity, and when so corrected it shall be a lien upon the property from the time of the original assessment. Furthermore, a relevy may be made when property is assessed too high or too low in making any special assessment, and any taxes collected in excess of the proper amount shall be refunded.

When no other provision is made in the law, all special assessments shall be levied by the council and a copy filed with the clerk and entered upon the tax book of the treasurer and become a lien upon the property from the date of the levy. The lien of different special assessments shall take priority in order of their levy and bear interest at the rate of six per cent unless otherwise provided. Such assessments become delinquent thirty days after the levy and shall be collected in the same manner and be subject to the same penalties as other taxes.⁴⁵⁴

XII

THE ADMINISTRATION OF JUSTICE

As corporations the special charter cities in Iowa had the power "to sue and be sued, plead and be impleaded"; and they were authorized to pass ordinances and enforce obedience to them by the levy of fines and forfeitures. In order to effectually carry out these powers courts were established, and presided over in most instances by the mayor or a justice of the peace.

COURT OFFICERS

The officers in the courts authorized for cities under special charter were in most instances the mayor and the marshal. In fact the charters usually stated that the mayor was *ex officio* conservator of the peace invested with the powers of a justice of the peace, and the marshal was the executive officer of the mayor's court. A clerk for the city court seems to have been provided in only one instance—in the revised charter for Dubuque enacted in 1857.⁴⁵⁵

The provisions of the charters now in operation relative to judicial officers were very similar, each one giving some judicial functions to the mayor and making the marshal the ministerial officer of the mayor's court.

According to the Muscatine instrument the mayor was *ex officio* a justice of the peace invested with exclusive original jurisdiction of all cases arising under the ordinances; the marshal was the conservator of the peace

and the executive officer of the mayor's court. The judicial department in the other four charters now in force was composed of the same officers.⁴⁵⁶ The Davenport charter, however, was amended in 1857 authorizing the election of a justice of the peace who was to have concurrent jurisdiction with the mayor in all cases arising under the ordinances of the city.⁴⁵⁷

The legislature in 1870 gave to all special charter cities the power of establishing a police court having a police judge. Six years later provision was made for a superior court in certain charter cities having the requisite population, presided over by a judge with the assistance of the city clerk and the marshal. Finally in 1915 certain charter cities were empowered to establish a municipal court with one or more judges, a clerk, and bailiff.⁴⁵⁸

KINDS OF CITY COURTS

From the beginning of the period of special charters in Iowa in 1838 until the present time, there have been a number of types or kinds of courts. During the special charter period from 1838 to 1858 three types of city courts were established. Of these the mayor's court was most common, being the official judicial authority in all but three instances. In 1856 a "recorder's court" was created for Keokuk, and in the following year a similar institution was authorized for Council Bluffs; while Dubuque's revised charter of 1857 contained detailed provisions for the establishment of a "city court".⁴⁵⁹ Since 1858 three types of courts have been authorized for cities under special charter, namely: the police court in 1870, the superior court in 1876, and the municipal court in 1915.⁴⁶⁰

JURISDICTION OF THE CITY COURTS

The special charters in Iowa usually gave the mayor such powers and jurisdiction to try cases as were invested by law in justices of the peace — although in some instances the mayor was given exclusive original jurisdiction over all cases arising under the city ordinances.

In the Muscatine charter of 1851 the mayor as *ex officio* justice of the peace was vested with “exclusive original jurisdiction of cases arising under the ordinances of the city, with criminal jurisdiction of offences against the laws of the state committed within the city, and with civil jurisdiction limited to the city, in the same manner as that of justices is or may be limited to their townships”. Appeals could, however, be taken to the district court.⁴⁶¹

The new charter granted to Davenport in the same year contained a rather more elaborate statement of the mayor’s powers and may be quoted as follows :

He shall by virtue of his office be a justice of the peace for said city . . . and shall have power and authority to administer oaths, issue writs and processes under the seal of the city, to take depositions, the acknowledgments of deeds, mortgages and all other instruments of writing, and certify the same under the seal of the city, which shall be good and valid in law, he shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and concurrent jurisdiction with all the other justices of the peace in all civil and criminal cases within the county . . . arising under the laws of the state; and shall receive the same fees, and compensation, for his services in similar cases. He shall also have such jurisdiction as may be vested in him by ordinance of the city in and over all places within five miles of the boundaries of the city,

for the purpose of enforcing the health, quarantine ordinances and regulations thereof and the protection of cemeteries or grave yards and enclosures.⁴⁶²

The Davenport charter was amended in 1857, authorizing the election of a police magistrate every two years by the qualified voters. He was required to be a resident of the city and a legal voter, must take the same oath and qualify in the same manner and possess all the powers of other justices of the peace in the county and have concurrent jurisdiction with the mayor in all cases arising under the ordinances.⁴⁶³

The charter provisions for Wapello, Glenwood, and Camanche were not unlike those of Muscatine mentioned above. Furthermore, the charters usually stated that the mayor should not be disqualified from acting in a judicial capacity because any of the proceedings were in the name of the city.⁴⁶⁴ Provision was also made in two instances for the performance of the mayor's judicial functions by any justice of the peace in the township during his absence or inability to serve.⁴⁶⁵ In addition it may be said that some of the charters authorized jury trials in the mayor's court and a change of venue was permitted by Wapello's charter⁴⁶⁶ — although no such regulations were mentioned in any of the five charters in force at the present time.

The police court, which was authorized for special charter cities in 1870, was to be presided over by a police judge who was given "in all criminal cases the powers and jurisdiction that are or may by law be vested in justices of the peace of the county". Furthermore, he was allowed jurisdiction over all offenses arising under the ordinances of the city "and of all cases of petit larceny and other inferior offenses which do not require an

indictment or presentment by the grand jury". And for the proper exercise of such jurisdiction the "police court shall have in respect of the issuing of process, the preserving order and punishing contempts, the administering oaths, the summoning and empaneling juries, or otherwise all the persons incident to the district courts in the hearing and determining like cases."⁴⁶⁷

In 1876 special charter cities having five thousand population were given power to establish a superior court to take the place of the police court just mentioned. The superior court was authorized to exercise concurrent jurisdiction with the district and circuit courts "except where said courts respectively have exclusive jurisdiction and except actions for divorce". In as much as the court was established primarily for municipal purposes it was given exclusive original jurisdiction to "try and determine all actions, civil and criminal, for the violation of the city ordinances".⁴⁶⁸

The legislature in 1915 passed a very comprehensive act of fifty-two sections providing for a municipal court in "any city, whether organized under a special charter, commission form of government or the general law . . . now or hereafter having a population of twenty thousand". Four years later the requisite population was reduced to five thousand.⁴⁶⁹ The jurisdiction of this court was stated in section eighteen as follows :

Said municipal court shall have concurrent jurisdiction with the district court, in all civil matters, where the amount in controversy does not exceed one thousand (\$1000.00) dollars, except in probate matters, actions for divorce, alimony, separate maintenance, those directly affecting the title to real estate, and juvenile proceedings, and said court shall have no power to grant injunctions, except where the issuance of the writ is

auxiliary to the other relief demanded and of which the court has jurisdiction. Said court shall have all criminal jurisdiction that is now or hereafter may be conferred on justice of peace, mayor's courts and police courts. Prisoners may be committed to the city prison or any other place or institution for confinement or punishment instead of the county jail or may be paroled or their sentence suspended, at the option of the judge.

The authority or jurisdiction of the mayor, however, over cases arising within the city was not final. This may be seen from the Muscatine charter which provided that "appeals to the district court in the same county shall be allowed from the judgment and decisions of the Mayor in the same cases, time and manner as they are at the time allowed by law from those of other justices, and they shall be tried in the same manner."⁴⁷⁰ The charters enacted for Wapello, Glenwood, and Camanche contained similar provisions.⁴⁷¹ The Davenport document did not provide for appeals to the district court in specific terms, but since the mayor was by virtue of his office a justice of the peace it may be presumed that appeals were permitted in like manner as from a justice court.⁴⁷²

In 1897 the legislature passed a statute prohibiting either a trial by jury and a change of venue, except on appeal, to the defendant in a prosecution for the violation of a city ordinance.⁴⁷³ Since trial by jury was very uncommon according to the charter provisions and change of venue allowed in but two instances, such a law would not seem to have been very necessary or effective.⁴⁷⁴ In addition the general law now prevents any prosecutions under the ordinances unless begun within one year after the commission of the offense; but judgments obtained in the mayor's court for violation of

ordinances may be transcribed and filed in the district court with the same force and effect as similar judgments rendered in civil cases.⁴⁷⁵

PROCEDURE IN CITY COURTS

Charter provisions relative to procedure in the court of the mayor or justice of the peace were very meager, most of the charters omitting the subject entirely. It may be presumed, however, that procedure in the mayor's court followed very closely that of the justice of the peace since they possessed equivalent authority.

Procedure in the police court — authorized for special charter cities in 1870 — was to be according to such rules, adopted by the judge, "as will give to all the parties a proper statement of any charge against them, full opportunity of being heard", but at the same time will dispatch the "business of the court with convenient speed."⁴⁷⁶

According to the statute creating the superior court it would appear that the rules of procedure were very similar to those of the circuit and district court. The law provided that "all statutes in force respecting venue and commencement of actions, the jurisdiction process, and practice of the circuit and district court, the pleadings, and mode of trial of action at law or in equity, and the enforcement of its judgments by execution or otherwise, and the allowance and taxing of costs, and the making of rules for practice or otherwise, shall be deemed applicable to the superior court".⁴⁷⁷

The legislature, however, in authorizing the municipal court in 1915 laid down more specific rules relative to procedure — causes of action being divided into four classes as follows :

Class "A" shall include all equitable actions and all ordinary actions, when the amount in controversy exceeds \$100.00, and all special actions of which this court has jurisdiction.

Class "B" shall include all ordinary actions when the amount in controversy is \$100.00 or less.

Class "C" shall include the trial of all public offenses of which this court has jurisdiction other than for the violation of the city ordinances.

Class "D" shall include all criminal actions for the violation of city ordinances.

The law also states that all statutes governing the district court as to pleading and practice, parties, evidence, commencement of actions, jurisdiction, process, modes of trial, judgment, execution, attachment, garnishment, replevin, and limitation of actions shall apply to the municipal court except when contrary to law.

In addition, the statute provided that pleadings in class "A" should be in writing in substantially the same form as in the district court, while the petition must be filed with the clerk at least five days before the day fixed by the original notice for the appearance of the defendant. All pleadings for class "B" were to be as provided for the trial of civil cases in the justice of the peace court. Furthermore, the court was authorized to make such rules as it deemed proper for the just determination of the rights of the parties.⁴⁷⁸

XIII

CONTROL OVER STREETS AND ALLEYS

ONE of the important powers of a city or incorporated town is its authority over streets. Municipalities whether existing under statute or charter are usually given power to open, establish, alter, repair, and vacate streets, as well as to improve, grade, pave, and regulate them.

CHARTER PROVISIONS IN IOWA

Special charters in Iowa usually provided that the corporation should consist of one road district, and the council was entrusted with the general care and improvement of the streets and alleys within the city limits, as well as with the appointment of one or more road supervisors or commissioners and the definition of their duties.

The power of these cities over roads was expressed in rather general terms, particularly during the early years of special charter legislation. After 1846 the charters usually contained detailed provisions permitting the council to vacate, improve, light, grade, and pave streets and alleys.

The Muscatine charter of 1851 contained provisions which were typical of those granted during the closing years of the period from 1838 to 1858. After authorizing the council to appoint one or more street commissioners, the charter gave the local legislative body power to "cause the streets and alleys of the city to be paved,

and the pavement to be repaired; and to that end it may require the owners of the lots adjacent to which it is to be done, to pave or repair one half in width of the street contiguous to their respective lots; and in case of neglect after a reasonable time named in the order, the same may be done by the city, and the expense may be assessed on such lots, which shall have the effect of a tax levied thereon, and they may be sold therefor, as for a tax, subject to the same right of redemption."⁴⁷⁹

Much more extensive powers were granted to Davenport in the same year, authorizing the city "to open, alter, abolish, widen, extend, establish, grade, pave, or otherwise improve and keep in repair streets, avenues, lanes and alleys; to establish, erect and keep in repair bridgesto provide for lighting the streets, and erecting lamp poststo provide for the enclosing, improving and regulating all public grounds belonging to the city[and] When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue, block, lot or alley, the corporation shall make a just compensation therefor". Provision was also made for a commission to determine such compensation, but whenever a street or alley was opened by the council as a result of a petition signed by three-fourths of all the owners of all property on the street, no compensation was to accrue to such owners.

Moreover, the city of Davenport was constituted a road district and the inhabitants were exempt from working on any road beyond the limits of the corporation. The street commissioners appointed by the city were authorized to exercise the powers conferred by law upon county commissioners with respect to road work.⁴⁸⁰

Authority was given the council in the Wapello char-

ter to establish the grade of wharves, streets, and alleys within the city and change the grade "upon petition of two thirds the value of the real property on both sides of the street" where the change was desired. Other powers over streets, alleys, and public grounds with respect to paving and the assessment of costs were similar to the powers granted to Davenport. Furthermore, labor on the streets could be imposed by the street commissioners, and the city was authorized to keep the streets in repair within one mile of the city limits.⁴⁸¹ The powers over streets enumerated in Glenwood's charter were almost identical with those given Wapello; while the powers expressed in the charter of Camanche were the common ones.⁴⁸²

During the years that elapsed between 1851 and 1857 eight amendments were made to the charters of Muscatine, Davenport, Wapello, and Glenwood, six of which dealt with streets and public grounds. In the main these amendments contained administrative features governing the compensation which the city must pay owners whose property might be taken for public purposes and will be discussed in a later section.⁴⁸³

LEGISLATION SUBSEQUENT TO 1858

During the years from 1858 to 1921 a considerable amount of legislation has been enacted affecting special charter cities in the direction of enlarging their powers relative to streets. In the *Compiled Code, 1919*, there appear about one hundred and twenty sections on this subject, of which about eighty have been taken bodily from the general law and made applicable to cities acting under special charter. This mass of legislation may be classified roughly as of three kinds : that which grants

power of a general nature, that giving power over streets between lot line and the curb, and that which authorizes the levy and collection of special assessments for improvements. Each of these types of legislation will be taken up in order.

GENERAL POWERS OVER STREETS

Special charter cities were given the same powers as those incorporated under the general act when they were authorized to change the name of any platted street, although the ordinance making the alteration must be certified by the mayor and recorder and filed with the county recorder before becoming effective.⁴⁸⁴

In 1897 numerous provisions of the general law relative to streets and public grounds were made applicable to cities under special charter. Thus, these cities received a uniform authority to establish, lay off, open, widen, straighten, narrow, vacate, extend, improve, and repair streets and all public grounds within the corporate limits. The expense of such action could be met in a variety of ways — either from the general fund, or from the highway or poll taxes, or partly from each or by special assessments on the property benefitted.⁴⁸⁵

Such cities were also authorized to fix the width of streets; to supervise and repair them; to require labor to be performed on the streets by all able bodied men between the ages of twenty-one and forty-five; to enforce such service on the streets or its equivalent in money; and to oil the streets if petitioned for by the property owners, collecting the cost from abutting property.⁴⁸⁶

Furthermore such cities since 1897 have been authorized to establish grades of streets or other public

grounds in any part of the city; construct embankments and fills; and change the grade of any street and pay damages as assessed by a board of appraisers.⁴⁸⁷

Other provisions of the general law that were made applicable in 1897 authorized such cities to regulate all conveyances and transportation on the streets, including jitney busses, and the driving of live stock. Moreover, trains were also subject to regulation; and in order to promote the public safety viaducts over railroad tracks or gates at dangerous crossings were authorized.⁴⁸⁸

Not only were cities under special charter empowered to regulate the speed of trains within the corporate limits, but in 1902 they were given power to authorize or forbid the construction of any interurban or street railway "upon, or over, or along the streets, alleys and public grounds within their limits" and prescribe the rules and regulations under which such construction could be made. The State has laid down certain regulations governing the precautions which must be taken at railroad crossings, and it authorizes the railroad commission to settle certain disputes that may arise between street railways and interurban railways using the same tracks and power.⁴⁸⁹

In addition to the foregoing regulations relative to railroads, the city council in any city acting under a special charter may order any railway or street railway to construct and maintain, under the direction and subject to the approval of the city engineer, culverts and drains across its right of way on any street, alley, highway, or other public place. If the railway company refuses or neglects to perform such service the council may order it completed and recover the cost from the company.⁴⁹⁰

Cities under special charter not only have rather general power over streets and alleys in regard to the matter of cleaning, repairing, oiling, paving, and altering, but they also have been given generous authority in regard to the erection and maintenance of sewers. Such cities have power to acquire land by condemnation if necessary, either within or without the city limits, for the purpose of establishing disposal plants or sewer outlets. Furthermore, the city could meet the expense from the general fund, the city sewer fund, or the district sewer fund.⁴⁹¹

Most of the legislation authorizing cities and towns to establish and maintain sewers has been made applicable to cities under special charter, authorizing them to levy and collect special assessments and to issue bonds and certificates. Such bonds and certificates are, however, evidences of debt and therefore the city is limited in their use.⁴⁹²

POWER OVER STREETS BETWEEN LOT LINE AND THE CURB

In 1915 the legislature enacted a law for the benefit of certain cities under special charter that changed completely the usual policy relative to the control of streets. The statute referred to granted special charter cities of twenty-five thousand population power "to place by ordinance, the charge, custody and control in the park commission, of all trees, shrubbery, flowers and grass outside of the lot or property lines and inside the curb lines and upon the public streets, and authorize the park commission to plant, cut, prune, remove, transplant, spray, care for and maintain all trees, shrubbery, flowers and grass outside of the lot or property lines and inside the curb lines and upon the public streets, in such a man-

ner as not to interfere with public travel''.⁴⁹³ At the time of its passage this law applied only to Davenport and Dubuque, although in 1917 the law was amended so as to extend its scope to all such cities without regard to population. From this it may be seen that a small town like Camanche having a population of about six hundred may exercise powers denied to a city like Des Moines.⁴⁹⁴ In keeping with the above statute the legislature gave to special charter cities having a population of twenty-five thousand the power to confer upon the park commission the right to determine "the location of permanent sidewalks outside of the lot or property lines and upon the public streets."⁴⁹⁵

The general control and regulation relative to both temporary and permanent sidewalks in cities under special charter are, however, the same as in the other cities organized under the general incorporation act. The legislature in 1900 and 1904 made the provisions of rather comprehensive laws applicable to such cities. These statutes cover in great detail the matter of objections, tax, certificates of levy, interest, payment, and sale of property as a means of collecting the special assessments.⁴⁹⁶

SPECIAL ASSESSMENTS FOR STREET IMPROVEMENTS

As mentioned in a previous section, special charter cities usually constituted one road district, and the council was entrusted with the general care and improvement of its streets. In some instances general road taxes were levied by the city council, although a few charters provided that such taxes should be levied and collected by the county officers and by them paid into the city treasury.⁴⁹⁷

The Muscatine charter gave the council power to require the owners of adjacent lots to pave or repair one-half of the contiguous street, and in case of neglect after a reasonable time "the same may be done by the city, and the expense may be assessed on such lots, which shall have the effect of a tax levied thereon, and they may be sold therefor, as for a tax, subject to the same right of redemption."⁴⁹⁸ This charter was amended in 1855 in order to give the council full power "to alter the width, course or grade" of any street or alley in the city. Since this might cause considerable damage, particularly in an improved section of the city, an arrangement was made whereby the injury could be assessed by a board of commissioners appointed by the county judge.⁴⁹⁹

Davenport in 1851 was given power "to open, alter, abolish, widen, extend, establish, grade, pave, or otherwise improve and keep in repair streets, avenues, lanes and alleys". Furthermore, the city could take private property for the purpose of "opening, widening or altering any public street, lane, avenue, block, lot or alley" in the city.

The charter, however, laid down a rather detailed scheme for making a proper assessment of the value of the property thus taken. A special tax was also authorized for the purpose of paving and grading, building sidewalks, or lighting the streets—to be apportioned according to frontage on the street improved.⁵⁰⁰

Wapello's charter of 1856 was almost identical with that of Muscatine already mentioned, while Glenwood's document differed from these in no important detail.⁵⁰¹ But the charter given to Camanche in 1857 contained a rather unusual power : in case a special tax had been

levied for the purpose of "curbing, grading or paving the side-walk" in front of any lots, the owners "shall not be liable to any other tax, general or special, for making any improvement of the same kind on any other street, alley, or highway" in the city.⁵⁰²

In 1897 special charter cities as a class were given authority to assess the cost of street improvements to abutting property, provided that the improvement shall have been approved by three-fourths of all the members of the council.⁵⁰³ The amount of such special assessment must be in proportion to the benefits conferred upon the property and in no case more than twenty-five per cent of the actual value of the property at the time of the levy. Furthermore, any deficiencies in the amount needed to pay for the improvement may be met from the general fund. The exact method of levying such special assessments in the charter cities does not differ from that used in other cities and towns : indeed, the same statutes apply.⁵⁰⁴

In 1913 the legislature made a section of the general law applicable to cities under special charters, authorizing them to levy a special tax of not to exceed two dollars per lineal foot for the construction of a storm waterway and a similar arrangement was made relative to sewers — special assessments of an unusual kind.⁵⁰⁵

In 1896 all charter cities having a population of over twenty thousand were given an additional power of providing for the improvement of streets and the entire cost including intersections — except that portion assessable against railroads and street railways — could be made the subject of a special tax against the property abutting or fronting upon the improved portion of the street.⁵⁰⁶

The provisions of this statute relative to intersections was changed considerably in 1897. According to the Code the cost of street improvements or sewers at the intersection of streets and half the cost at spaces opposite streets intersecting but not crossing and at spaces opposite property owned by the city or state may be paid, in case of sewers, from the city sewer or district fund or the general fund, or assessed against the property abutting or adjacent thereto, and in the case of street improvements, from the city improvement or general fund, or assessed against the property abutting or adjacent thereto, except that part to be constructed by railways or street railways. The terms "abutting or adjacent property" and "property abutting on" are to be interpreted to include the easement and right of way of any railway company located along any street or on lands abutting or adjacent thereto, in all cases where no property except that of a municipal corporation intervenes between said easement or right of way and the traveled portion of the street or highway.⁵⁰⁷

The cost, however, of opening, widening, extending, or grading a street must be paid from the grading fund; while the cost of making any street improvement, not ordered paid from the city improvement or grading fund, or by any railroad or street railway, must be met by a special assessment against the abutting property in proportion to the linear front feet, the term street being interpreted to include avenue, highway, alley, or public ground.⁵⁰⁸

Furthermore, when the cost of any street improvement is ordered paid from the city improvement or grading fund the council may by resolution levy the whole or a part of the cost of the improvement upon all the

taxable property of the city. The certificates of such levies setting forth the amount, the percentage, and the maturity of such taxes and of each installment are filed with the collector, placed upon the tax-books, and collected in the same manner as other taxes. In 1923 the general law relative to the payment from the primary road fund for an improvement not properly assessable on the property of the district was made applicable to cities acting under special charter.⁵⁰⁹

MUNICIPAL LIABILITY RELATIVE TO STREETS

It is a rather generally accepted principle of municipal government that the police power of a city extends to all reasonable regulations for the purpose of keeping the sidewalks, streets, and public places free from obstructions and nuisances. Indeed, since the protection of life and limb is a matter of public concern there is both the power and the duty on the part of such corporations to pass and enforce reasonable police regulations for this purpose.⁵¹⁰

In Iowa a number of cases relative to the liability of cities under special charter have been decided : cases involving both personal and property rights as affected by the exercise of municipal power over streets.

The legislature in 1848 gave the city of Keokuk a charter authorizing it to establish and regulate the grade of streets.⁵¹¹ Five years later damages were sought by a resident for being compelled to raise his brick store house in order to meet the grade as reestablished by the council. The Court after reviewing similar cases in several States came to the conclusion that the city under such circumstances was not liable for damages growing out of the proper exercise of its author-

ity; and that the power to regulate the grade of streets comprises the power to change the grade, without liability for the prudent exercise of that power.⁵¹²

On the other hand, damages may result if the work of grading or regulating streets is done in an improper and unskillful manner. Thus, the Supreme Court of Iowa as early as 1854 held that the "negligent or unskillful manner of using or appropriating the property, whereby damage is produced, is to all intents the same to the injured party, whether occasioned by the acts of a private citizen, or a public corporation, and the law protects him equally against both."⁵¹³ A similar view was announced in a much later case, making it incumbent upon the city to use reasonable care, judgment, and skill in the construction of street improvements.⁵¹⁴

Therefore, the liability of a city for damages resulting from the regulation of streets appears to be dependent upon the manner in which the work is done — no liability pertaining if the work is done with reasonable care and skill.⁵¹⁵

Some obligation, however, rests upon the private citizen, requiring him to use ordinary care to avoid damage. Such has been the opinion of the courts in a number of cases. For example, one may not recover damages to his property caused by a diversion of a stream of water against it by the city if he might have prevented the damage by ordinary diligence and at a moderate expense.⁵¹⁶

Furthermore, a city will not be liable for failure to provide culverts or gutters adequate to keep surface water from adjoining lots which are below grade, particularly if the injury would not have occurred had the lots been filled up to the level of the street.⁵¹⁷

Similar principles appear to have been laid down by the courts relative to those personal injuries which result from defective streets or sidewalks. A city is, therefore, not obliged to do more than to keep its sidewalks in a reasonably safe condition.⁵¹⁸ Small obstructions on a sidewalk may, however, cause the city to be liable for personal injuries resulting therefrom — the Court holding that the liability does not depend upon the size of the defect, but upon the effects which may reasonably be apprehended from it.⁵¹⁹ A city may even be held liable for the slippery condition of a sidewalk due to its failure to remove the snow within a reasonable time.⁵²⁰

In addition it may be pointed out that it is the duty of a city to keep the streets in a reasonably safe condition for public use — that the corporation is liable for defects and obstructions in a street arising from its natural condition. If a street has been opened to the public it must be made safe.⁵²¹ The courts of Iowa, however, have not been inclined toward the view that it is the duty of a city to keep every street safe for travel throughout its entire width, regardless of its location and the amount of travel;⁵²² but where there is nothing in the character of the improvement to show the intention of the city that travel shall be confined to a particular portion of the street, the city will not be relieved from the duty of keeping the entire width in repair.⁵²³

The question of the extent of municipal authority over highways has frequently arisen in connection with the right of a city to allow railways to use streets. Such a case, involving the city of Davenport, was decided by the Supreme Court in 1880. One of the chief questions confronting the Court was whether the city had authority, in the absence of a grant from the General Assembly,

to authorize or permit the use of the streets for purposes not mentioned in the special charter of the city. The Court decided the question in the negative and declared that "The fee of the streets is in the city, and yet it is held in trust for the use and benefit of the public. The city does not have the authority to sell and convey the title held by it or authorize the streets to be used for private purposes. Nor can it without legislative authority grant the use of a street for a public purpose, which renders it dangerous for the public to travel over it in any other manner. The power partakes of that of eminent domain, which, under our government, can only be granted by the law-making power of the state."

The Court further declared that "Streets and highways are under the exclusive control of the general assembly. It matters not if the fee of the streets is in the city, it has no authority to control or grant rights and privileges thereto or thereon, unless it has been so authorized. The power and authority of the city is contained in its charter and bounded thereby. It has no other or different control of the streets than is prescribed in the charter or the general statutes of the state."⁵²⁴ The city of Davenport, however, was held responsible for the use of its streets and liable for damages, although the officers permitting such use did it unlawfully. Suit for damages is a proper remedy to redress unlawful acts.

It is rather fundamental that a municipal corporation is not liable beyond the actual damages resulting from its negligence, and then only if sufficient notice has been given to the city.⁵²⁵ Therefore, express notice of a defective street or sidewalk must be given, or the defect

or obstruction must have been so notorious as to have been observed by all before the city will be held guilty of negligence.⁵²⁶ Mere proof of the existence of a defective street or sidewalk is not enough to establish negligence on behalf of the city.⁵²⁷

It appears, however, that a city is not always responsible for the condition of its streets. For instance where an excavation is made in a street for the purpose of repairing a water pipe, the city having no actual notice of the obstruction, the Court held that the city could not be held liable for an injury to a traveler over such street.⁵²⁸ But where a defect has existed for such a length of time that the officers should have discovered it, then the law presumes that sufficient notice has been given, whether they actually knew it or not being immaterial.⁵²⁹

Only ordinary care is required of one using the streets in order to relieve him of contributory negligence. In an early case the Supreme Court of Iowa laid down the rule that all that can be demanded of a party in regard to obstructions in the streets is that "ordinary care" be employed to avoid them.⁵³⁰ Following the above principle, the Court in a later case declared that in order to recover for an injury from a defective street, one must show not only that the street was not safe, but that he was exercising ordinary care.⁵³¹

On the other hand, sidewalks are constructed for the benefit of foot travelers, and a person who walks elsewhere without good and sufficient reason should not, if injured, be allowed to complain that he was injured through the negligence of the city.⁵³² But one who is using a crossing at night when he is unable to see has a right to rely upon its being in a reasonably safe condi-

tion — unless he has knowledge to the contrary.⁵³³ Such knowledge, however, will not defeat a claim for damages, if he was not guilty of negligence.⁵³⁴ In other words, one can not be excused if he consciously incurs danger for which there is no necessity.⁵³⁵

POWER TO TAKE PRIVATE PROPERTY FOR STREETS

Most of the special charters granted to the cities and towns of Iowa contained authority relative to the purchasing of property; and in several instances the council was given the power of eminent domain. For example, the Maquoketa charter provided that “the council shall have the right to take and appropriate private property to the use of said city, or destroy or remove the same when it shall be necessary . . . by paying to the owners the full value thereof, to be ascertained by disinterested appraisers, as shall be provided by ordinance.”⁵³⁶

Private property taken by the corporation might be used for a variety of purposes — among which may be mentioned streets and alleys, public parks and grounds, and public buildings. As a matter of fact the council in several cities had power to erect and repair market houses, work-houses, hospitals, public halls, and city jails.⁵³⁷

Several of the charters now in force — or the amendments thereto — provide for the exercise of the right of eminent domain with respect to streets. While the Muscatine charter of 1851 appears to contain no provision on this subject, the amendment of 1856 gave the council power “to take any steps which they may deem necessary to secure the extension of the present streets and alleys . . . *Provided*, that in no case shall such ex-

tension be made and dedicated to the use of the public without the city being liable for full compensation to the owners''.⁵³⁸ No method for arriving at a just compensation was mentioned.

The Davenport document devoted an entire article to the subject of taking private property for public use. The charter provided that whenever it was necessary to take private property for street purposes, the corporation should make just compensation to the owner — the value to be ascertained by a jury of six disinterested freeholders, in case an agreement could not be reached. An exception, however, was made in the case of those property owners who petitioned for the street alterations : such persons by signing the petition surrendered all claim to either compensation or damages. The report of the freeholders being made to the mayor could be set aside by him for good cause and a new inquest made.⁵³⁹ The charter was amended in 1857, the number of commissioners being reduced to three who were to be appointed by the council.⁵⁴⁰

An amendment to the Wapello charter gave that city the power to establish streets and alleys, although the city would be liable to the persons injured "in such sum as may be adjudged proper by three disinterested persons, to be selected by the marshal".⁵⁴¹ The Camanche charter adopted a different plan by giving the council power "to view and assess the damages" and make a return of their findings to the county judge and if approved by him "such judgment shall be final."⁵⁴²

All special charter cities may now purchase or take through condemnation proceedings any property within or without the city limits for any of the following purposes :

1. For parks, commons, cemeteries, crematories, hospital grounds, natatoriums or public baths.

2. For establishing, laying out, widening, straightening, narrowing, extending and lighting streets, avenues, highways, alleys, landing places, public squares, public grounds, public markets or market places and public slaughter houses.

3. For any other purpose, where such purchase or condemnation is herein, or in the charters of such cities, or may hereafter be, authorized.⁵⁴³

In addition such cities may condemn land whenever necessary for the purpose of changing a watercourse or for the construction of sewers or other artificial channels.⁵⁴⁴

The proceedings for the condemnation of land in special charter cities must be in accordance with the provisions of the Code relating to the taking of private property for public improvements — excepting some minor qualifications of the jurors.⁵⁴⁵

XIV

PUBLIC UTILITIES IN SPECIAL CHARTER CITIES

ONE of the questions which is becoming increasingly more urgent in local government is the power of municipalities — under legislative sanction — to construct, maintain, and operate public utilities, or to regulate the operation and to control the rates, when such utilities are owned and conducted by private enterprise. In their very nature public utilities tend to become monopolistic in character, for it has not been found wise to permit the rivalry of independent concerns in the field of a particular service.

Indeed, it appears that with the spread or expansion of the services rendered by public utilities the dependence of municipalities upon them has increased, making the need for agencies to insure the furnishing of these services in proper amounts at satisfactory prices the more urgently felt. This accounts for the increasing body of law on this subject which is being evolved from time to time both by legislative enactments and by judicial decisions.

CHARTER PROVISIONS RELATIVE TO PUBLIC UTILITIES

Public utilities, as such, are of rather recent origin. In the main the Iowa charters — all of which were granted previous to the year 1858 — contained little that could be regarded as authorizing municipally owned public

utilities. There was, indeed, little if any need for such activities.

A few of the charters, however, did make provision for securing a water-supply and for the lighting of streets. Furthermore, authority was granted to borrow money for legitimate municipal purposes; and land could be condemned and water-works constructed at the expense of the city. As is frequently the case in pioneer legislation these provisions were rather vague, containing a mere statement of the power of the council. Of the charters now in force the one given Davenport appears to have contained the only specific grant of power on this subject. That charter states that the council may "provide for lighting the streets, and erecting lamp posts".⁵⁴⁶ Although rather barren in its language the courts have since held that such provision is sufficient to authorize a city to contract therefor.⁵⁴⁷

LEGISLATION SINCE 1858 AUTHORIZING PUBLIC UTILITIES

The legislature in 1872 made it possible for the cities and towns of Iowa to construct, maintain, and operate a system of water-works, or at their discretion were given power to authorize it to be done by individuals or corporations on such terms as might be agreed upon. Similar power relative to gas works was conferred in 1888, and the power to open or restrict the use of city streets to street railways was granted in 1890.⁵⁴⁸

The first general authorization of this character, however, does not appear to have been granted to cities under special charter until 1897, when the legislature gave them power "to establish, erect, purchase, lease, maintain or operate, within or without the corporate limits, water works, gas works, electric light or electric

power plants [if] a majority of the electors voting on such a proposition" shall favor it. Moreover, they were given power to grant to individuals or corporations the authority "to erect, maintain, or purchase such works or plants, or railways, street railways or telephone systems, for the term of not more than twenty-five years". And although renewals or extensions of such franchises were permitted for periods not to exceed the time just mentioned, the granting or renewing of any franchise could be completed only after publication of the application for it.⁵⁴⁹ Such questions could be submitted by order of the council to the voters either at a general or special election; or, when petitioned by twenty-five property owners in each ward, the mayor was compelled to submit such question—the expense of such an election being paid by the one seeking an extension or a renewal of a franchise.⁵⁵⁰

In addition, many sections of the general law for other cities and towns have been made applicable to cities acting under special charter—a number of sections being made applicable by the *Code of 1897*.

One of these provisions of the general law gave special charter cities the power to authorize or forbid the building of street railways within the corporate limits and to either grant or withhold permission to railways or street railways to lay their tracts on any street, alley, or other public place. In the event that permission was given, all damages for injury to property abutting on the street must be ascertained and compensated for before such tracks were laid. Furthermore, the law required that all cars for passengers used on street railways should be equipped with vestibules during a certain portion of the year.⁵⁵¹

In 1897 the general law authorizing the construction, operation, and maintenance of heating plants, water-works, gas works, and electric light or power plants was made applicable to special charter cities. The first part of the law appears to be very similar to the one of 1872 previously cited. Later an amendment was added authorizing such a plant in cities having less than ten thousand population to utilize their steam and excess power in the manufacture of artificial ice.

Furthermore, the statute authorized the submission of the question of the erection and operation of such plants to the voters for approval; sanctioned the condemnation of private property for such purposes; made provision for a court of condemnation; laid down the general rules for assessment of rates of service, and taxes to pay for operating, extending, or renewing such works; and provided that every individual or private corporation operating such plants should be required to furnish adequate service, and fix satisfactory rates therefor.⁵⁵²

On the other hand, special charter cities of over fifteen thousand were given additional powers when in 1897 an entire chapter of the law as found in the Code giving authority to cities of the first class to purchase and construct water-works was made applicable to municipalities under special charter.⁵⁵³

The law authorized such cities to establish a special sinking fund to pay for the purchase or erection of a water-works system or to pay any indebtedness incurred for water-works already owned. The general operation of the water system was placed under the control of a board of trustees appointed for a term of six years by the mayor. The powers and duties of the board were set forth in the law, the most important being the selec-

tion of a superintendent for the actual management of the works, fixing the rates of service, and making a quarterly report to the council showing in detail all receipts and disbursements.⁵⁵⁴

In 1907, however, additional powers were given to all cities under special charter having a population of over thirty-five thousand. This statute provided that the water-works should be managed by a board of trustees, composed of three resident electors appointed by the mayor for a term of three years. Each trustee was required to qualify by executing an official bond in the sum of five thousand dollars, the expense of which could be paid from water-works funds. Provisions relative to the removal of such trustees for cause was included in the statute. In 1923 such a board of trustees was authorized for special charter cities having less than thirty-five thousand population. The term of the trustees was increased to six years and the amount of the bond was doubled. At this time the legislature also provided for the compensation of such officers.

The board, moreover, was empowered to employ a superintendent and such other persons as may be necessary for the proper conduct of the business. The treasurer was required to keep a separate account of all money collected in connection with the water system and it could be paid out by him only upon written order of the trustees. Financial obligations were authorized for the better operation of the plant and in the payment of which the trustees were allowed to anticipate revenues for the current year. Furthermore, the board was empowered to fix water rates and to enforce rules and regulations for the collection of rentals and the promotion of good service. Both quarterly and annual reports were

to be made to the council showing receipts, disbursements, assets, and liabilities. Proceedings of the board of trustees were required to be kept and published in the official newspapers of the city; and all books, vouchers, and records were to be open to inspection at any time. This law was very similar to the statute for cities of the first class mentioned above, although it was considerably more detailed in its provisions.⁵⁵⁵

INTERPRETATION OF POWERS

In connection with an interpretation of the powers of the special charter cities of Iowa over public utilities it may be proper to point out again that such cities have no inherent power to make laws or adopt ordinances, but can exercise only such authority as is expressly granted by their charters or by the acts of the legislature which have been made applicable to them. Furthermore, it has long been the practice of the courts to resolve any reasonable doubts as to the existence of authority against the corporation.⁵⁵⁶ In other words, municipal corporations may exercise only those powers which have been expressly granted to them, together with those incidental ones which may be necessary to make such powers available and are essential to effectuate the purposes of the corporation.⁵⁵⁷

Indeed, a city may have been given authority either by charter or statute to purchase, maintain, and operate a public utility such as a water-works or gas plant and still be powerless to perform this function due to the legal limitation on indebtedness which the Iowa Constitution places upon all municipal corporations.

Such a case involving the question of indebtedness was decided by the Supreme Court in 1878. It appears

that the city of Burlington, already indebted beyond the constitutional limit, entered into a contract whereby a private company was to construct a water-works and that as soon as the financial condition of the city would permit it, the city was to purchase the plant.

The legislature had given such cities the power to erect or authorize the erection of water-works, and where such authority was granted to a company the city could allow a charge to be made for the use of water. Furthermore, a tax of not to exceed five mills in any one year was authorized for the purpose of paying the expenses and operating the works.

The question before the Court, therefore, was whether such measures created an indebtedness within the constitutional inhibition. In deciding the issue the Court held that "if a present indebtedness is incurred or obligations assumed which, without further action on the part of the city, have the effect to create an indebtedness at some future day, such are within the inhibition of the constitution. But, if the fact of indebtedness depends upon some act of the city, or upon its volition to be exercised or determined at some future day, then no present indebtedness is incurred, and none will be until the period arrives".⁵⁵⁸

A similar conclusion was reached in a case which was decided in 1902. The Court held that the provisions contemplating the levy of a tax payable in installments in the future to be appropriated as collected to the payment of the amount necessary to secure the water-works, were not such as to constitute indebtedness, because the corporation was not under obligation to pay except as the money from taxes was collected.⁵⁵⁹

Bonds, however, issued for the construction of a water-

works in pursuance of statutory provisions authorizing the levying of taxes in the future, upon the condition that when the proceeds of the tax were sufficient to retire the bonds the water-works would become the property of the city, are invalid because they constitute a debt — the city of Ottumwa being already indebted up to the constitutional limit.⁵⁶⁰

The power of a special charter city to enter into a questionable contract was decided by the Supreme Court in 1901. Cedar Rapids, already indebted up to the constitutional limit, endeavored to evade responsibility by attempting to acquire a water-works in consideration of hydrant rentals. The city by ordinance agreed to pay the water company a rental of \$95.00 per hydrant for a period of twenty-three years. The Court held that the ordinance was invalid both as to the time and the amount, since it appeared that \$50.00 would have been a reasonable charge.⁵⁶¹ In the following year the franchise given by the city of Cedar Rapids was again made the subject of a suit in which the Court held that an ordinance giving a corporation the exclusive right to supply the city with water was in fact a franchise. According to the provisions of the agreement the city gave the corporation the exclusive privilege to furnish water for a period of twenty-five years and "an equal right thereafter with all others". Subsequent to the passage of the ordinance the legislature legalized the franchise, declaring it binding and effective for all the purposes therein expressed. The water company proceeding under this contract, installed water-works and made improvements to the aggregate cost of over four hundred thousand dollars. After the expiration of a little over twenty-five years the city passed an ordinance fixing a schedule

of rates which the company declared were not compensatory. The real question before the Court, therefore, was whether the clause of the franchise giving the company certain rights after the expiration of the twenty-five year period was valid and binding. The Court in reviewing the case pointed out that according to the *Code of 1873* a city could not grant such a franchise for a term of more than twenty-five years, and that an ordinance giving any rights or privileges for a longer period was void.

As a matter of interpretation the Supreme Court also held that the power to "provide lights for streets" necessarily implies the authority to enter into a contract for the purchase of such light from others. Under such circumstances, however, the city does not necessarily have power to fix the rate of compensation for a long period in advance.⁵⁶²

XV

CONCLUSION

DURING the period from 1836 to 1858 there were sixty special charters granted to forty cities and towns in Iowa. The first two charters were enacted by the legislature of the original Territory of Wisconsin for the towns of Burlington and Fort Madison. During the Iowa Territorial period (1838-1846) there were fourteen charters granted by the Legislative Assembly; while during the remainder of the period (1846-1858) forty-four municipal charters were voted by the General Assembly.⁵⁶³

The amount of special legislation, therefore, seemed to increase with each successive legislature from 1838 to 1857. The last session in which special laws could be enacted — just previous to the adoption of the present Constitution — was by far the most prolific in the granting of special municipal charters. During this session (1856-1857) there were enacted sixteen municipal charters and about forty special laws relating to particular cities and towns. Indeed, about two hundred and sixty pages of the four hundred and seventy pages of the laws for that session were filled with special legislation for particular municipalities.⁵⁶⁴

It appears that there was little if any attempt to limit the granting of special charters to towns because of the lack of a sufficient population. But in general it seems that the municipalities which were granted charters were

among the important ones of that time — in location if not always in population. The important cities and towns of Iowa during the early years were to be found, for the most part, along the rivers. This is but another illustration of the tendency of peoples everywhere — inland settlements being of a later development. Indeed, twenty-four of the forty special charter cities were located upon rivers, several of which were navigable in the early days. More than half of these towns were located upon the banks of the Mississippi River. Moreover, the special charter cities were grouped in the southeastern part of the State.⁵⁶⁵

The population of these river towns grew rapidly, and perplexing questions arose relative to the control of docks, ferries, ships, shipping, vending, and traffic which must be governed and controlled by municipal authorities. Thus arose a need for a more flexible form of city government than was provided by the general incorporation acts of the period. These matters were of local importance only, and the enactment of special charters and special legislation was considered as the easiest, if not the best method of settling them. It is not, therefore, a matter of much surprise that the local communities and the legislature continued, in spite of the new Constitution, to feel the need of special legislation — the former to request it, the latter to enact it.

SPECIAL LEGISLATION AFTER 1858

As previously stated, State Constitutions frequently authorize the classification of cities and some of them specify the number of classes into which municipalities may be divided. Furthermore, the courts have held that the classification of cities for legislative purposes must

not evade directly or indirectly the intent of the Constitution in its prohibition of special legislation.

Accordingly, the New York Constitution recognizes three classes of cities, although it does not forbid special legislation. In Pennsylvania classification has been described by the courts as "the grouping together for purposes of legislation of communities or public bodies which by reason of similarity of situation, circumstances, requirements and convenience will have their public interests best subserved by similar regulations"; while in New Jersey the test of proper classification is that of "a grouping of objects having characteristics sufficiently marked and distinguished to make them a class by themselves, having regard to the object of the legislation."⁵⁶⁶

Although special laws as a rule are not defined by Constitutions, such acts are those which affect less than all of the cities of a class. It does not follow, therefore, that a law is general because it operates upon all within a group; for it is a special law if it applies to all within a class unless it may be shown why it was not made to apply generally to all.⁵⁶⁷

The Iowa Constitution, while it forbids the incorporation of cities and towns by special act, also declares that "where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State".⁵⁶⁸

It appears that the practice of passing special laws for particular cities was not prevented by the Constitution. This is shown by the fact that the legislature in 1858 passed three statutes for particular cities by name — for Dubuque, Davenport, and Sioux City — two of which were declared null and void by the Supreme Court.⁵⁶⁹ In 1860 another special act was passed for

Dubuque. Four special laws were enacted in 1862 — one each for McGregor (held unconstitutional), Dubuque, Waterloo, and Toledo.⁵⁷⁰ At least three other special laws were passed : section seven of an amendment to Keokuk's charter was repealed in 1876; a section of Knoxville's charter was repealed and a substitute enacted therefor in 1878; and in 1882 Fort Dodge was the recipient of a special act.⁵⁷¹ All of these laws were probably unconstitutional, since the courts of this State have held that if a statute is necessarily restricted to one municipal corporation and its language prevents the act from ever being applied to any other it will be held special and void.⁵⁷²

In Iowa the classification of cities has been carried to an extreme. According to the general incorporation act of 1858, three classes of municipalities were created on the basis of population. Since that time, although without formal enactment, three other classes or groups have been established : cities under special charter, cities under the commission type of government, and those having the manager plan.⁵⁷³

Furthermore, the legislature has adopted the practice of creating several classes within each group. For example, it has been customary for the legislature to pass laws, not only for special charter cities without regard to population, but to give certain powers to those having a population as follows : five thousand or over; seven thousand or over; ten thousand or over; twenty thousand or over; twenty-five thousand or over; thirty thousand or over; thirty-five thousand or over; eighty-five thousand or over; forty thousand or over; and twenty thousand or over according to the *Census of 1885*.⁵⁷⁴

Such a detailed classification, however unnecessary,

may be constitutional in this State where the courts have held that a law which operates upon a particular condition wherever that condition exists, is not in conflict with the Constitution forbidding special legislation even though it applies to but few cities.⁵⁷⁵

In the classification of special charter cities mentioned above, it would seem that no substantial distinctions were made making one class really different from another; nor does the character of each class appear so different, the one from another, as to suggest the necessity or propriety of a varied legislative treatment.

EXISTENCE OF HOME RULE IN IOWA

The cities and towns of Iowa incorporated by special acts of the legislature enjoyed a rather large degree of home rule — particularly during the period from 1838 to 1858. The people of the local community not only had in many instances a considerable share in formulating their charters in accordance with local needs, but they also had in effect authority to amend their charters. Special charter cities had little difficulty in securing amendments from the legislature. In fact, as already pointed out, a few charters expressly provided for the submission of amendments to a vote of the people without recourse to the legislature. While such charters and their amendments were subject to legislative control, the records do not show the existence of a meddlesome attitude on the part of the General Assembly.

In 1858 the legislature by a general statute made provision for the abandonment of special charters, but the interests of the people of the local community were given primary consideration : the initiative for abandon-

ment resides in the inhabitants affected. Furthermore, those cities which preferred to retain their charters were now given specific authority to amend them. The initiative for amendments was permitted to come either from the voters or their representatives — the council — although a majority vote favoring the ratification of the amendment was necessary in either case.⁵⁷⁶

It is true that the legislature may by a simple act nullify any of the charter provisions or amendments, providing the statute applies to cities of a class, that is, if the act is general in its operation. Moreover, since 1858 the special charter cities have been the recipients of several hundred such general laws. These statutes, however, have been in the nature of additional grants of power rather than restrictive in character. In fact the courts have held that where general provisions are made applicable to cities under special charter the provisions peculiar to such cities are not repealed thereby.⁵⁷⁷ On the whole, the legislature appears to have treated such cities in a manner not materially different from those of other classes — least of all have restrictive and hampering regulations been made for the purpose of interfering with their local government.

During the period from 1838 to 1858 the special charter cities were not the only areas enjoying the advantages of home rule. According to the *Code of 1851* a sort of "general-special" charter was provided which could be adopted by any village containing three hundred inhabitants. The charter was very general in its provisions, authorizing incorporation either as a town or a city depending upon the population of the community.⁵⁷⁸

The initiative for such incorporation resided with the inhabitants who were empowered to petition the county court for permission to submit the question to a vote of the people. If a majority of the people were in favor of becoming incorporated the court would then fix a time for the holding of an election for the choice of persons to prepare a "charter, or articles of incorporation". The charter when drafted was dependent for its acceptance upon the approval of a majority of the "legal votes for and against it".

The statute referred to gave a tentative outline for the framers of the charter to follow, but the provisions of the law were "intended only to fix limits to the power of a town or city incorporation, leaving the people, if they choose, the privilege of narrowing those limits as much as may be thought desirable or to fix other conditions in addition to those above required."⁵⁷⁹

This is the only method prescribed by the *Code of 1851* for the incorporation of municipalities, and it appears to have granted a considerable degree of local autonomy. Few towns, however, seem to have taken advantage of its provisions—the more important cities having already been given special charters by the legislature.⁵⁸⁰ The plan, however, may not have had a fair chance to show its possibilities since it was repealed by the general incorporation act of 1858.⁵⁸¹

DISADVANTAGES OF SPECIAL CHARTERS

The exact status of cities acting under special charter appears to be rather uncertain. A considerable degree of variation exists between the charter provisions—a condition making necessary an unusual amount of judicial interpretation. Indeed, it is this variation in the

charters that has made it difficult to build up a body of precedents : each charter constituted in reality a separate municipal code. Such conditions lead to litigation and frequently cause delay in the exercise of public functions.

Furthermore, every additional class into which the cities and towns of the State are divided requires a greater expenditure of time if not of wisdom by the legislature. The special charters are viewed as matters of local concern, and legislation affecting them is usually passed without much debate. Indeed, according to a leading authority on municipal government the legislatures "have come to regard each member as representing and speaking for his own constituency, and have countenanced a tacit understanding that legislation affecting that locality should be his especial and individual care. Having no feeling of responsibility to those whose suffrages do not elect them, they are indifferent to legislation not affecting their immediate constituencies. This indifference results in a process of log rolling founded upon a tacit agreement that where political interests do not intervene, local legislation requested by the representative of the locality shall become law without objection."⁵⁸²

Such a condition appears to pertain in Iowa, although it may be pointed out in all fairness that the bringing of pressure upon the legislature for local privileges has not been confined to those areas having the special charter form of incorporation. Practices of this character, however, are not to be encouraged — particularly if the spirit of the constitutional prohibition against special legislation is to be followed.⁵⁸³

Most authorities agree that a considerable degree of

home rule for municipalities is necessary, but that it is unwise for its benefits to be secured through the repeated application of special legislation. The exterior limits of municipal authority over important functions could be fixed by statute and at the same time allow each community to determine matters of a purely local character in accordance with the principle of home rule, thus relieving the State legislature of an undesirable responsibility.

ADVANTAGES OF SPECIAL CHARTERS

As already pointed out in another connection, the cities acting under special charter constitute one of the classes into which the municipalities of Iowa have been divided. Moreover, these charter cities have been the recipients of many legislative acts which have been made applicable to them without reference to their population. This practice may be viewed as a particular advantage, especially to the smaller cities and towns fortunate enough to have been granted a special charter. Municipal powers which no doubt were sought by and originally intended for the special charter cities of considerable population were given also to the other smaller cities and towns having nothing in common with the larger communities except similarity in type of government.

In no other way may some of the legislation passed in recent years be explained. For instance, in 1917 the legislature enacted a law giving all special charter cities authority to place the custody of the property between the lot line and the curb under the control of the park commission. Thus, Camanche, a town of a little over six hundred inhabitants, was given the same power as

Davenport with a population of over fifty-six thousand.⁵⁸⁴

Not only have special charter cities for many purposes been considered as a distinct class of municipalities, but they have also been divided into classes or groups on the basis of population. This makes it possible for a city like Davenport to be given special consideration under the guise of a general law which grants certain powers to all special charter cities having a population of thirty-five thousand.⁵⁸⁵

Furthermore, the people living in a special charter city have considerable freedom in the choice of the type of municipal government under which they will live: they may elect to remain under their special charter, they may choose to abandon their charter and become incorporated under the general law, or they may decide to adopt either the manager plan or the commission plan. A population of two thousand is required for any city desiring to adopt the commission form of government.⁵⁸⁶

In addition the inhabitants of all special charter cities have power to initiate amendments to their articles of incorporation. This power does not appear to have been used extensively probably because of an unfortunate experience which Clinton had in 1860, two years after the authority of amendment was conferred upon the people. The Supreme Court held that an act of the legislature had rendered the amendment null and void — a decision no doubt proper because the streets within the borders of a city can not be considered to be entirely under the jurisdiction of the municipality.⁵⁸⁷ The power of charter amendment, however, being resident in the people of such cities could be exercised in refer-

ence to purely local matters without much danger of legislative interference.

Moreover, special charter cities appear to have practically all the rights, privileges, and powers which have been conferred upon the municipalities organized under the general incorporation law : most of the provisions of the general municipal law have been made applicable to such cities by special reference. Powers of taxation, municipal functions, authority over city property, and the exercise of police power are not materially different in cities incorporated under general or special statutes.

The cities and towns in Iowa having the special charter form of incorporation possess both advantages and disadvantages — rather more of the former than the latter, particularly from the point of view of the local area. Since 1857 about thirty-five special charters have been abandoned that the people might adopt either the general law, the commission plan, or the city manager plan of government. Of the five charters now in force, sentiment probably plays an important part in their retention : one does not readily give up a form of government which has been in operation, and fairly satisfactorily, for a period of considerably over half a century.

APPENDICES

APPENDIX A : STATUTORY REFERENCES TO THE SPECIAL CHARTERS IN IOWA AND THEIR AMENDMENTS

THE SPECIAL CHARTERS

- ALBIA, Monroe County : *Laws of Iowa*, 1856-1857, p. 208.
- BELLEVUE, Jackson County : *Laws of Iowa*, 1850-1851, p. 206.
- BLOOMFIELD, Davis County : *Laws of Iowa*, 1854-1855, p. 9.
- BLOOMINGTON (now Muscatine), Muscatine County : *Laws of the Territory of Iowa*, 1838-1839, p. 248; *Laws of Iowa*, 1850-1851, p. 59.
- BURLINGTON, Des Moines County : *Laws of the Territory of Wisconsin*, 1836-1838, p. 470; *Laws of the Territory of Iowa*, 1845, p. 73.
- BURRIS CITY, Louisa County : *Laws of Iowa*, 1856-1857, p. 313.
- CAMANCHE, Clinton County : *Laws of Iowa*, 1856-1857, p. 359.
- CEDAR RAPIDS, Linn County : *Laws of Iowa*, 1848-1849, p. 116, 1856 (Extra Session), p. 29.
- CENTERVILLE, Appanoose County : *Laws of Iowa*, 1856-1857, p. 107.
- CHARLES CITY, Floyd County : *Laws of Iowa*, 1856-1857, p. 325.
- CLINTON, Clinton County : *Laws of Iowa*, 1856-1857, p. 132.
- COUNCIL BLUFFS, Pottawattamie County : *Laws of Iowa*, 1852-1853, p. 108.
- DAVENPORT, Scott County : *Laws of the Territory of Iowa*, 1838-1839, p. 265, 1841-1842, p. 41; *Laws of Iowa*, 1850-1851, p. 110.
- DES MOINES, Polk County : *Laws of Iowa*, 1852-1853, p. 49, 1856-1857, p. 281.
- DUBUQUE, Dubuque County : *Laws of the Territory of Iowa*,

- 1839-1840, p. 124, 1845-1846, p. 114; *Laws of Iowa*, 1846-1847, p. 104, 1856-1857, p. 343.
- EDDYVILLE, Wapello County : *Laws of Iowa*, 1856-1857, p. 245.
- FAIRFIELD, Jefferson County : *Laws of Iowa*, 1846-1847, p. 49.
- FARMINGTON, Van Buren County : *Laws of the Territory of Iowa*, 1840-1841, p. 33; *Laws of Iowa*, 1846-1847, p. 95.
- FORT MADISON, Lee County : *Laws of the Territory of Wisconsin*, 1836-1838, p. 481; *Laws of the Territory of Iowa*, 1841-1842, p. 74; *Laws of Iowa*, 1848 (Extra Session), p. 64.
- GLENWOOD, Mills County : *Laws of Iowa*, 1856-1857, p. 33.
- GUTTENBERG, Clayton County : *Laws of Iowa*, 1850-1851, p. 100.
- IOWA CITY, Johnson County : *Laws of the Territory of Iowa*, 1840-1841, p. 97; *Laws of Iowa*, 1850-1851, p. 84, 1852-1853, p. 99.
- KEOKUK, Lee County : *Laws of Iowa*, 1846-1847, p. 154, 1848-1849, p. 18.
- KEOSAUQUA, Van Buren County : *Laws of the Territory of Iowa*, 1841-1842, p. 107; *Laws of Iowa*, 1850-1851, p. 142.
- KNOXVILLE, Marion County : *Laws of Iowa*, 1854-1855, p. 97.
- LE CLAIRE, Scott County : *Laws of Iowa*, 1854-1855, p. 20.
- LYONS, Clinton County : *Laws of Iowa*, 1854-1855, p. 142.
- MAQUOKETA, Jackson County : *Laws of Iowa*, 1856-1857, p. 176.
- MOUNT PLEASANT, Henry County : *Laws of the Territory of Iowa*, 1841-1842, p. 14; *Laws of Iowa*, 1850-1851, p. 195, 1854-1855, p. 136, 1856 (Extra Session), p. 18.
- NASHVILLE, Lee County : *Laws of the Territory of Iowa*, 1840-1841, p. 88.
- NEWTON, Jasper County : *Laws of Iowa*, 1856-1857, p. 143.
- OSKALOOSA, Mahaska County : *Laws of Iowa*, 1854-1855, p. 123.
- OTTUMWA, Wapello County : *Laws of Iowa*, 1856 (Extra Session), p. 63.
- PRINCETON, Scott County : *Laws of Iowa*, 1856-1857, p. 416.
- SALEM, Henry County : *Laws of the Territory of Iowa*, 1839-1840, p. 72; *Laws of Iowa*, 1854-1855, p. 162.

- SIOUX CITY, Woodbury County : *Laws of Iowa*, 1856-1857, p. 51.
 TIPTON, Cedar County : *Laws of Iowa*, 1856-1857, p. 159.
 WAPELLO, Louisa County : *Laws of Iowa*, 1856 (Extra Session), p. 52.
 WASHINGTON, Washington County : *Laws of Iowa*, 1856-1857, p. 219.
 WINTERSET, Madison County : *Laws of Iowa*, 1856-1857, p. 41.

AMENDMENTS TO THE SPECIAL CHARTERS

- BLOOMFIELD, Davis County : *Laws of Iowa*, 1856 (Extra Session), p. 51, 1856-1857, p. 67.
 BLOOMINGTON (now Muscatine), Muscatine County : *Laws of the Territory of Iowa*, 1840-1841, p. 13, 1841-1842, p. 120, 1845-1846, p. 61; *Laws of Iowa*, 1848 (Extra Session), p. 37, 1848-1849, p. 68, 1852-1853, p. 137, 1854-1855, p. 76, 1856 (Extra Session), p. 49, 1856-1857, pp. 24, 149.
 BURLINGTON, Des Moines County : *Laws of the Territory of Iowa*, 1838-1839, p. 71, 1840-1841, p. 86; *Laws of Iowa*, 1846-1847, p. 91, 1848 (Extra Session), p. 17, 1848-1849, pp. 33, 146, 1850-1851, p. 80, 1852-1853, p. 84, 1854-1855, pp. 56, 211, 1856-1857, pp. 128, 240, 261.
 COUNCIL BLUFFS, Pottawattamie County : *Laws of Iowa*, 1854-1855, p. 3, 1856-1857, pp. 112, 270.
 DAVENPORT, Scott County : *Laws of the Territory of Iowa*, 1843-1844, p. 149; *Laws of Iowa*, 1846-1847, p. 88, 1848-1849, p. 44, 1852-1853, p. 117, 1854-1855, p. 83, 1856-1857, p. 92.
 DUBUQUE, Dubuque County : *Laws of the Territory of Iowa*, 1840-1841, p. 11, 1842-1843, p. 27; *Laws of Iowa*, 1848 (Extra Session), p. 74, 1850-1851, pp. 46, 142, 1852-1853, p. 89, 1854-1855, pp. 15, 175, 1856-1857, pp. 270, 339.
 FAIRFIELD, Jefferson County : *Laws of Iowa*, 1848 (Extra Session), p. 26, 1850-1851, p. 107, 1856-1857, p. 28.
 FARMINGTON, Van Buren County : *Laws of the Territory of*

- Iowa*, 1842-1843, p. 23, 1843-1844, p. 113; *Laws of Iowa*, 1848 (Extra Session), p. 9, 1850-1851, p. 177.
- FORT MADISON, Lee County : *Laws of the Territory of Iowa*, 1842-1843, p. 38, 1843-1844, p. 152; *Laws of Iowa*, 1846-1847, p. 149, 1848-1849, p. 137, 1850-1851, p. 166, 1852-1853, p. 57, 1854-1855, p. 169, 1856 (Extra Session), pp. 18, 73.
- GUTTENBERG, Clayton County : *Laws of Iowa*, 1854-1855, p. 45, 1856-1857, p. 152.
- IOWA CITY, Johnson County : *Laws of the Territory of Iowa*, 1843-1844, p. 158; *Laws of Iowa*, 1854-1855, p. 179, 1856 (Extra Session), p. 61, 1856-1857, p. 435.
- KEOKUK, Lee County : *Laws of Iowa*, 1848 (Extra Session), p. 61, 1848-1849, p. 18, 1850-1851, p. 93, 1852-1853, p. 132, 1856 (Extra Session), p. 42, 1856-1857, pp. 18, 301, 396, 399, 402.
- KEOSAUQUA, Van Buren County : *Laws of the Territory of Iowa*, 1842-1843, p. 44, 1845-1846, p. 102.
- LYONS, Clinton County : *Laws of Iowa*, 1856 (Extra Session), p. 62, 1856-1857, p. 65.
- MOUNT PLEASANT, Henry County : *Laws of the Territory of Iowa*, 1842-1843, p. 32, 1843-1844, p. 103; *Laws of Iowa*, 1852-1853, p. 39, 1856-1857, p. 201.
- OSKALOOSA, Mahaska County : *Laws of Iowa*, 1856-1857, p. 60.
- OTTUMWA, Wapello County : *Laws of Iowa*, 1856-1857, p. 85.
- SALEM, Henry County : *Laws of the Territory of Iowa*, 1842-1843, p. 40; *Laws of Iowa*, 1854-1855, p. 162.
- WAPELLO, Louisa County : *Laws of Iowa*, 1856-1857, p. 71.

APPENDIX B : THE DAVENPORT CHARTER WITH AMENDMENTS

[Davenport is the largest of the special charter cities, having a population according to the *Federal Census, 1920*, of 56,727. The charter quoted below was granted by the legislature in 1851. References for the charter and the amendments may be found in Appendix A. — EDITOR.]

AN ACT TO INCORPORATE THE CITY OF DAVENPORT

ARTICLE I

OF THE BOUNDARIES AND GENERAL POWERS

Section 1. *Be it enacted by the General Assembly of the State of Iowa*, That the inhabitants of the town of Davenport in the county of Scott and state of Iowa, be, and they are hereby, constituted a body politic and corporate, by the name and style of the “City of Davenport,” and by that name shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

2. All that district of country embraced within the following limits, and such additions as hereinafter provided, shall be the limits of the boundaries of said city, to wit : “Beginning at the point in the middle of the main channel of the Mississippi river where the western boundary line of the old town of Davenport extended, would intersect the middle of the said main channel, running northward by and along said western boundary line to the north-west corner of said old town; thence eastwardly and along the northern line of blocks numbered on the plat of Le Clair’s addition to said town, as blocks number forty-nine, fifty, fifty-one and fifty-two, to the north-east corner of block fifty-two; thence in the same direction across Rock Island street; thence southwardly along the eastern side of said

street to Sauk or Second street; thence eastwardly along the northern boundary of said last mentioned street, to where the same if extended, would reach low-water mark on the bank of the Mississippi river; thence at right angles to the last course, to the middle of the main channel of said river, and thence down and along the middle of said main channel to the place of beginning," are hereby declared to be within the boundaries of the said city of Davenport.

3. The tracts of land laid off into town lots and duly recorded as required by law for the recording of "town plats" adjoining said town, or whenever any tract of land adjoining the city of Davenport shall have been laid off or shall hereafter be laid off into town lots, and duly recorded as required by law, the same shall be annexed to, and form a part of the city of Davenport.

4. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to implead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatever; to purchase, receive and hold property, both real and personal and mixed in said city; to purchase, receive and hold property, both real, personal and mixed beyond the city for burial grounds or for other purposes, for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real, personal and mixed for the benefit of the city; and to improve and protect such property, and to do all other things in relation thereto as natural persons.

ARTICLE II

OF THE CITY COUNCIL

1. There shall be a city council to consist of a mayor and board of aldermen.

2. The board of aldermen shall consist of two members from each ward, to be chosen by the qualified voters for two years.

3. No person shall be an alderman, unless at the time of his election a citizen of the United States, six months a resident

of the state of Iowa, over the age of twenty one years and resident three months within the limits of said city. If any alderman shall after his election remove from the ward for which he is elected in said city, his office, shall be thereby vacated. At the first meeting of the city council the aldermen shall be divided by lot into two classes, the seats of those of the first class shall be vacated at the expiration of the first year; and of the second class, at the expiration of the second year, so that one-half of the board shall be elected annually.

4. The city council shall judge of the qualifications, elections and returns of their own members and shall determine all contested elections. A majority of the city council shall constitute a quorum to do business, but a smaller number may adjourn from time to time and compel the attendance of absent members, under such penalties as may be prescribed by ordinance. They shall have power to determine the rule of its proceedings, punish their members for disorderly or contemptuous conduct, and with the concurrence of two-thirds of the members elected, expel a member. They shall cause to be kept a journal of their proceedings and may from time to time publish the same, and the yeas and nays when demanded by any member present shall be entered on the journal. All vacancies that shall occur in the board shall be filled by election.

5. The mayor and each alderman before entering upon the duties of their respective offices, shall take and subscribe an oath or affirmation "that they will support the constitution of the United States, and of the state of Iowa, and that they will discharge the duties of their office to the best of their knowledge and ability." Whenever there shall be a tie in the election of an alderman the judges of the election shall certify the same to the mayor, who shall determine the same by lot in such manner as shall be determined by ordinance. There shall be twelve stated meetings of the city council in each year, at such times and places as may be prescribed by ordinance, and for such special meetings as they may deem necessary.

ARTICLE III

OF THE CHIEF EXECUTIVE OFFICER

1. The chief executive officer of the city shall be a mayor, who shall be elected by the qualified voters of the city, and shall hold his office for one year, and until his successor shall be elected and qualified. No person shall be eligible to the office of mayor, who shall not be a citizen of the United States a resident of the city one year next preceeding his election, and over the age of twenty-one years; and if any mayor shall during the time for which he shall have been elected, remove from the city, or be absent therefrom more than two months at any one time, his office shall become thereby vacated.

2. When two or more persons shall have an equal number of votes for mayor, the judges of the election shall certify the same to the city council, who shall proceed to determine the same by lot, in such manner as may be provided by ordinance, whenever an election shall be contested for mayor, the city council shall determine the same in such manner as may be prescribed by ordinance; and whenever any vacancy shall happen in the office of mayor, it shall be filled by an election, and until such an election shall be had, it shall be competent for the board of aldermen to elect one of their number president, who shall be mayor *protem*.

ARTICLE IV

OF ELECTION

1. On the first Saturday of April next an election shall be held in each ward of said city, for one mayor for said city, two aldermen for each ward, and forever thereafter on the first Saturday of April, of each year, there shall be an election held for one mayor for the city, and an alderman for each ward. The city council shall before each annual or special election,

appoint three electors in each ward of said city to act as judges and clerks of said election, who shall take the same oath, conduct the elections in the same manner as are now provided or hereafter may be provided by law for holding and conducting elections for county officers, said judges and clerks shall return a certified statement of the persons voted for as aldermen and mayor in their respective wards within three days to the clerk of said city, and a majority of said judges shall meet at said clerk's office on the Monday following, and canvass the number of votes cast for mayor, and certify the number of votes cast, who for, and the person elected mayor (provided there has been a choice) to the clerk of said city. The clerk shall receive said returns, certificates and poll books, and preserve the same among the papers of his office, and shall give the person and persons receiving the highest number of votes for mayor and aldermen, a notice of their election, within two days after the receipt of the returns aforesaid, and such person receiving such notice of his election, as mayor or aldermen, shall within five days after the receipt of such notice, take the oath prescribed in this act for the office to which he may have been elected, and a neglect or refusal to take such oath and file the same with the clerk shall be taken as a refusal of said office, and the city council may proceed to fill such vacancy as provided, for in this act.

2. All resident citizens over the age of twenty-one years, who are entitled to vote for state officers, and who shall have been actual residents of said city ninety days next preceding said election, shall be entitled to vote for city officers; provided, that said electors shall give their votes for mayor and aldermen in the wards in which they respectively reside; and for voting illegally at any election herein provided for, shall be punished in the same manner and with like effect, as is provided under the general laws of the state of Iowa for illegal voting.

ARTICLE V

OF THE LEGISLATIVE POWERS OF THE CITY COUNCIL

1. The city council shall have power and authority to levy and collect taxes upon all taxable property, real, personal and mixed, within the city, not exceeding one half per cent. per annum upon the assessed value thereof, which value shall be ascertained by the assessor of said city; to provide by ordinance the time for taking such assessment, when the same shall be returned to the city clerk, and also provide for the assessing of property that may have been omitted or overlooked or otherwise not returned by said assessor, also the time when said clerk shall make out and deliver to the marshal of said city, a copy of said assessment together with the tax due or assessed, which said copy, shall be sealed with the common seal of said city, with a warrant for the collection of the taxes so assessed, signed by the mayor, and clerk of said city. The city council shall have power to correct or equalize any erroneous or injudicious assessment. The marshal shall be the collector of all taxes assessed as aforesaid he shall upon receiving a copy of such assessment and warrant as aforesaid, make personal demand of every resident charged with tax if to be found within said city, or leave a written notice of the amount of such tax at his or her place of abode, and shall put up at least one written notice in each ward of said city, that if the taxes are not paid within twenty days thereafter, the same will be collected by sale of property of delinquents; at the expiration of which twenty days said marshal may, and he is hereby authorized by distress and sale of personal property of such delinquent or delinquents, as constables on execution, to collect said tax or he may after the expiration of said twenty days if said tax shall remain unpaid, give notice by publication in one of the newspapers published in said city for six consecutive weeks, stating the amount of said tax costs and printer's fee, and the number of the lot, or the description of the piece of land or property on which the same are due, and the owners name if

known, and that the said lot, piece of land or property will be sold on the day and at the place to be mentioned in said notice, unless payment be made of the taxes, costs and printer's fee on or before said day of sale, and if such payment should not be made according to said notice, then said marshal shall proceed and sell the same in accordance with said notice, for said amount due, to the bidder who will take the least quantity of the lot or piece of land or property, off from the side, which said marshal shall designate, or the whole if no bid for a less quantity, and he shall give to the purchaser thereof a certificate stating the description of the piece of land or the number of the lot or the portion thereof or the property purchased and price paid therefor and the day of sale, and at the expiration of two years thereafter, if the owner or claimant shall not redeem the same by paying the amount for which the same was sold together with fifty per cent per annum to the purchaser or to the city treasurer for said purchaser's benefit, said purchaser or his heirs or assigns shall be entitled to a deed therefor, and the mayor of said city shall on demand and the presentation of said certificate make execute and deliver to the holder or owner of such certificate a deed for said property in said certificate mentioned, which when acknowledged, or proven and recorded, as other deeds are acknowledged and proven, shall be good and valid in law and equity, to pass a valid title to such lot, piece of lot, ground or property, and shall be *prima facie* evidence in all courts that all things have been complied with, nor shall the same ever be inquired into until the amount for which said property or real estate together with the interest aforesaid shall have been tendered to the holder thereof or deposited in the city treasury for his or their benefit.

2. The city council shall have power to provide by ordinance from time to time for the election of a clerk, treasurer, assessor, marshal, and one or more street commissioners, by the electors of said town, by causing one or more polls to be opened in said

city for said purpose; and they may appoint such other officers as they may deem necessary, or provide for their election by the voters of said city at the same time and place that the above officers are elected, their tenure of office shall be one year, and said city council before the election or appointment of any officer aforesaid, shall have power to require of any or all of them, bonds with penalty, and security, for the faithful performance of their respective duties, as may be deemed expedient, and to take an oath for the faithful performance of the duties required of them in their respective offices, before entering upon the discharge of the same, to establish, support and regulate common schools, to appropriate money, and provide for the payment of the debts and expenses of the city, to borrow money on the credit of the city, to be used for such purposes as they may think conducive to the welfare thereof. In all cases where the city council may borrow money they shall provide for the payment of the interest thereof, by setting apart a portion of the ordinary revenue, and collecting it for that purpose the question of borrowing money shall be submitted and approved by a majority of the tax payers of said city: *Provided*, That no debt shall be contracted that the interest per annum in any one year due thereon, shall exceed one half of the revenue derived from tax on the real estate and personal property within said city. To make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws for that purpose, and enforce the same within five miles of the city; to establish hospitals, and make regulations for the government of the same. To make regulations to secure the general health of the inhabitants; to declare what shall be a nuisance, and to prevent, remove or abate the same; to tax dogs or prevent them from going at large; to provide the city with water; to erect hydrants and pumps in the streets for the convenience of the inhabitants; to open, alter, abolish, widen, extend, establish, grade, pave, or otherwise improve and keep in repair streets, avenues, lanes

and alleys; to establish, erect and keep in repair bridges; to divide the city into wards, alter the boundaries thereof, and erect additional wards as the occasion may require; to provide for lighting the streets, and erecting lamp posts; to establish, support and regulate night watches; to erect market houses, establish markets and market places, and provide for the government and regulation thereof; to provide for the erection of all needful buildings for the use of the city; to provide for the enclosing, improving and regulating all public grounds belonging to the city; to improve and preserve the navigation of the Mississippi river within the limits of the city; to erect, repair and regulate public wharves and docks; to regulate the erection and repair of private wharves, and the rates of wharfage thereat; to license, tax, and regulate auctioneers, transient merchants, retailers and grocers, taverns, ordinaries, hawkers, pedlars, brokers, pawnbrokers and money changers; to license, tax, and regulate hackney carriages, wagons, carts and drays, and fix the rates to be charged for the carriage of persons, and for the wagonage, cartage, and drayage of property; to license and regulate porters, and fix the rates of portorage; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to tax billiard tables, restrain, prohibit and suppress tipling houses, dram shops, gaming houses, bawdy and other disorderly houses; to provide for the prevention and extinguishment of fires, and to organize and establish fire companies; to regulate or prohibit the erection of wooden buildings in any part of the city; to regulate the fixing of chimneys, fix the flues thereof; to regulate the storage of gunpowder, tar, pitch, rosin, and other combustible materials; to regulate and order parapet walls and partition fences; to establish standard weights and measures, and to regulate the weights and measures to be used in the city, in all cases not otherwise provided for by law. To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work; to provide for the inspection and

weighing of hay and stone coal, the measuring of charcoal, fire wood and other fuel to be sold or used in the city; to provide for, and regulate inspection of tobacco, beef, pork, flour, meal and whiskey, in barrels; to regulate the weight, quality and price of bread to be sold and used in the city; to provide for taking the enumeration of the inhabitants of the city; to regulate the election of city officers, and to provide for the removing from office any person holding an office created by ordinance; to fix the compensation of all city officers, and regulate the fees of jurors, witnesses and others, for services rendered under this act or any ordinance; to prohibit the discharging of fire-arms, and the racing and immoderate running or driving of horses, drays, carts, carriages, wagons, or other vehicles, in said city; to regulate the police of the city; to impose fines, forfeitures, and penalties for the breach of any ordinance, and provide for the recovery and appropriation of such fines and forfeitures, and the enforcement of such penalties, and the licensing and regulating retailers of spirituous and vinous liquors, in said city.

The city council shall have power to make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this act, so that such ordinances be not repugnant to, or inconsistent with the constitution of the United States and of the State of Iowa.

The style of the ordinances of the city shall be "Be it enacted by the city council of the city of Davenport."

All ordinances passed by the city council, shall within one month after they shall have been passed, be published in some newspaper published in said city, or a certified copy thereof, signed by the clerk, posted up at one or more public place in each ward of said city, and shall not take effect until ten days after such publication, or posting up, as above provided for. All ordinances, bye-laws, rules and regulations, shall be recorded by the clerk of the city in a book to be kept for that purpose, with a certificate to each, that the same has been

published in some newspaper published in said city, or a copy thereof posted in each ward thereof, and that the same is a correct copy of the original as passed by the city council; and the said book, or a copy of any bye-law, ordinance, rule or regulation, with the certificate of the clerk, of the publication aforesaid, certified by the said clerk to be a true copy of such bye-law, ordinance, rule or regulation, shall be sufficient authentication to allow the same to be read or received in evidence, in all actions and suits, in any court in this State, or when said bye-laws, ordinances, rules, and regulations, shall be published in book or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

ARTICLE VI

OF THE MAYOR

1. The mayor shall preside at all meetings of the city council, and shall have a casting vote and no other, in case of the non-attendance of the mayor at any meeting, the board of aldermen shall appoint one of their own members chairman who shall preside at the meeting.

2. The mayor or any two aldermen may call special meetings of the city council, by notifying each alderman, mayor and clerk of said city, of the time and place of meeting, and the business to be transacted at such meeting; and no other business than that designated in said notice, shall be transacted.

3. The mayor shall at all times be active and vigilant in enforcing the laws and ordinances for the government of the city; he shall inspect the conduct of all subordinate officers of said city, and cause negligence and positive violation of duty to be prosecuted and punished; he shall from time to time communicate to the aldermen such information, and recommend all such measures, as in his opinion, may tend to the improvement of the finances, the police, the health, security, comfort and ornament of the city.

4. He shall by virtue of his office be a justice of the peace for said city, and as such shall be a conservator of the peace in the said city, and shall have power and authority to administer oaths, issue writs and processes under the seal of the city, to take depositions, the acknowledgments of deeds, mortgages and all other instruments of writing, and certify the same under the seal of the city, which shall be good and valid in law, he shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and concurrent jurisdiction with all other justices of the peace in all civil and criminal cases within the county of Scott, arising under the laws of the state; and shall receive the same fees, and compensation, for his services in similar cases. He shall also have such jurisdiction as may be vested in him by ordinance of the city in and over all places within five miles of the boundaries of the city, for the purpose of enforcing the health, quarantine ordinances and regulations thereof and the protection of cemeteries or grave yards and enclosures.

5. He shall before entering upon the discharge of the duties of his office give bond and security to be approved of, and filed with the clerk of said city, in the same penalty and with like conditions as are required of justices of the peace now by law, and the same may be prosecuted for any breach in the same manner and with the like effect, as is required by law for similar cases under the laws of Iowa, he shall receive for his services as mayor of said city such salary as shall be fixed by an ordinance of the city.

6. In case the mayor shall at any time be guilty of a palpable omission of duty, or shall wilfully and corruptly be guilty of oppression, mal-conduct or partiality, in the discharge of the duties of his office, he shall be liable to be indicted in the district court of Scott county, and on conviction he shall be fined in a sum of not exceeding two hundred dollars, for the use of said city, and the court shall have power on the recommendation of the jury trying said indictment, to add

to the judgment of the court that he be removed from office.

7. All processes or writs issued by the mayor may be either a warrant for the arrest of the person of the offender, or writs in the usual form, directed to the marshal of said city, who shall serve and return the same as commanded in said warrant or writs, and in case of a warrant to bring the offender forth-with before said mayor, the marshal of said city shall have the same authority, and may do and perform the same duties, and shall be subject to the same liabilities in the service and return of all such writs and process issued by, and in attending the trial before such mayor, for recovery of fines and penalties, for the breach or violation of any of the by-laws, ordinances, rules or regulations of said corporation, that constables have in their respective counties.

ARTICLE VII

PROCEEDINGS IN SPECIAL CASES

1. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue, block, lot or alley, the corporation shall make a just compensation therefor, to the person whose property is so taken; and if the amount of such compensation cannot be agreed on, the mayor shall cause the same to be ascertained by a jury of six disinterested freeholders of the city. When three-fourths of all the owners of all the property on a street, lane, avenue, block or alley, proposed to be opened, widened or altered, shall petition therefor, the city council may open, widen or alter such street, lane, avenue, block or alley, upon conditions to be prescribed by ordinance, but no compensation shall be made in such case to those whose property shall be taken for the opening, widening or altering such street, lane, avenue, block or alley, nor shall there be any assessment of benefits or damages that may accrue thereby to any of the petitioners.

2. All jurors impannelled to inquire into the amount of benefits or damages, which shall happen to the owners of

property proposed to be taken for opening, widening or altering any street, lane, block or alley, shall first be sworn to that effect, and shall return to the mayor, their inquest in writing signed by each juror; in ascertaining the amount of compensation for property taken for the above purposes, the jury shall take into consideration the benefit, as well as the injury, happening by such opening, widening or altering aforesaid.

3. The mayor shall have power for good causes shown within ten days after an inquest shall have been returned to him as aforesaid, to set the same aside and cause a new inquest to be made, but he shall have power to set the same aside as aforesaid but once, for each party, when the city council shall still determine whether said street, lane, avenue, block or alley shall be opened, widened or altered.

4. The city council shall have power by ordinance to levy and collect a special tax on the holders of the lots in any street, lane, avenue, alley or block, or the side of a block fronting or lying on an alley, or part of any street, lane, avenue or alley, according to their respective fronts owned by them for the purpose of paving and grading the sidewalks and lighting such streets, lane, avenue, or alley or parts thereof.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

1. The inhabitants of the city of Davenport are hereby exempted from working on any road beyond the limits of the city, and from paying any tax to procure laborers to work upon the same, and said city is hereby constituted a road district, with powers conferred on any one or more street commissioners as the city council may appoint or provide for the election of, as are now conferred under the laws of the state of Iowa upon supervisors of roads and highways, and the said city council shall have the same authority to provide for work in the corporate limits of said city, on the streets, lanes, alleys, public grounds, wharves, landings, avenues and highways as

are now by law or hereafter may be conferred on the several boards of county commissioners or such other tribunal as the state may provide and clothe with such authority, and they shall provide for the collection and appropriation of such work by ordinance.

2. The city council shall have power for the purpose of keeping the streets, lanes, avenues and alleys in repair, to require every male inhabitant in said city over twenty-one years of age to labor on said streets, lanes, avenues and alleys not exceeding three days in each and every year, and any person failing to perform such labor when duly notified by the street commissioner shall forfeit and pay the sum of one dollar per day for each day so neglected or refused.

3. The city council shall have power to provide for the punishment of offenders by imprisonment in the county jail or work house, or city prison, in all cases where such offenders shall fail or refuse to pay the fines and forfeitures which may be recovered against he, she or them.

4. The city council shall cause to be published or posted up in each ward of said city annually, twenty days before each annual election for mayor, a full and complete statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended, showing the entire indebtedness of said city, and also the amount of road work, from whom received, money paid instead of work, the disposition of said work and money.

5. The city council shall provide well bound books for their own use, and for the use of the officers under their city charter. They shall cause their clerk to keep a journal of the proceedings of their meetings, which shall be signed by said clerk and the presiding officer of each meeting. He shall also keep a record of the returns of the marshal, in which he shall record the number of lot, price of ground or description of land or property sold by him for taxes due on assessment, the amount for which it was sold, the time when sold, the purchaser's name

and the time of redemption, when redeemed, for what amount and the person to whom, and when deeded. And said marshal shall so make his return of the tax lists of each year, as to enable said clerk to state the above facts in said delinquent tax book. A book to record the acts and reports of the street commissioners, and the name, age and residence of deceased persons buried in the city cemetery, and when such person became deceased, and of what disease such person died, if known; also an order book stating the amount allowed each person out of the city treasury, the name of the person to whom allowed, when and by whom drawn; they shall also provide the mayor and his successor in office with a record or docket in which he shall record all the proceedings had before him as such mayor, for the violation of ordinances, his judgments, and the reports required to be made to him as such mayor and justice of the peace. All of the books above provided for shall be open for the inspection of the inhabitants of said town at all reasonable hours, free of expense, tax or fee.

6. All suits, actions and prosecutions instituted, commenced or brought by the corporation hereby created, shall be instituted, commenced and prosecuted in the name of the city of Davenport, and in cases of warrants the same may [be] issued for violations of the ordinances, by-laws, rules and regulations of said city without being predicated or based upon affidavit.

7. The city council shall have power to provide by ordinance for filling of temporary vacancies in any subordinate office, where the same shall occur from sickness, absence from the city or inability on the part of any officer, or sudden death, until the same can be filled as is provided by ordinance, or another elected.

8. The mayor and aldermen of the town of Davenport shall cause this act to be published in each of the papers of said town, or they may provide for the publication and distribution of one hundred copies among the inhabitants of said town; and ten days after the publication or the distribution of the

copies herein provided for, for an election for or against the adoption of this charter; such election shall be holden in some public place therein, where all the voters may attend during the day between the hours of 10 A. M. and 4 P. M. and vote by ballot "For new charter" or "Against new charter," and if "For new charter" shall have a majority of the votes cast "for" and "against," this charter shall immediately take effect as a law, but if a majority of the votes given shall be against the adoption of said charter, then this act [is] to be of no effect.

9. All ordinances and resolutions passed by the mayor and aldermen of the town of Davenport, shall remain in force until the same shall have been repealed by the city council of Davenport. The boundaries of the wards of the city shall (until otherwise changed by the city council of the city of Davenport) be the same as those heretofore of the town of Davenport, all actions, fines, penalties and forfeitures which have accrued to the mayor and aldermen of the town of Davenport, shall be vested in, and prosecuted by the corporation hereby created. All property, real, personal and mixed heretofore belonging to the mayor and aldermen of the town of Davenport, shall be and the same is hereby declared to be vested in the corporation hereby created. This charter shall not invalidate any act done by the mayor and aldermen of the town of Davenport nor divest them of any right which may have accrued to them prior to the passage of this act, but the same shall inure to and be enjoyed by the corporation hereby created.

10. Appeals shall be allowed from decisions in all cases arising under the provisions of this act or any ordinance passed in pursuance thereof, to the district court of Scott county. Any and every such appeal shall be taken and granted in the same manner and with like effect as appeals are taken from, and granted by justices of the peace to the district court, under the laws of this State. The city marshal or any officer authorized to execute writs or other process issued by the mayor, shall

have power to execute the same any where within the limits of Scott county, and shall be entitled to the same fees for traveling as are allowed to constables in similar cases; and in case of the interest, inability or disqualification of the marshal to act in any station or position hereby created in this act, the mayor shall have authority to deputise such person as he may think proper, by writing on the process to be served or executed, that such person is so deputed, who shall be vested with all the power and authority of such marshal, for the time being.

11. This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity in this State without further proof. All acts or parts of acts coming within the provisions or perview of this act, or contrary to, or inconsistent with its provisions on the taking effect of this charter, are hereby repealed.

12. The mayor and clerk shall sign all by-laws and ordinances passed by said corporation, and the same shall be carefully filed and preserved by the clerk. All bills, bonds, notes, drafts, or contracts, ordered by said corporation shall be signed by the mayor and attested by the clerk; and all bills, bonds, notes, drafts or contracts so signed and attested, and in case of bonds or contracts under seal, sealed with their common seal, shall be valid and binding on said corporation, in law and equity, in every court in Iowa.

13. The service of all process against said city of Davenport, shall be by leaving with the mayor, or in his absence, with the clerk, a certified copy thereof, and in case of subpoena in chancery, a certified copy of the bill also.

14. No alderman shall receive any compensation for his services as such, for serving on committees created by the city council, nor hold any office or station under this charter, unless an ordinance providing for such service and compensation, and the amount of such compensation shall have been adopted by said city council, and submitted to the voters of said city, and

a majority of the votes cast are in favor of the same; but they shall be exempt from the three days work on the streets, sidewalks and highways herein provided for, and be eligible to act as judges and clerks of elections under this charter.

15. Any failure to hold any election or expression of opinion provided for under this charter, shall not operate as a forfeiture thereof, but in case the mayor and aldermen of the town of Davenport failing to provide for the election or vote to be had (here in provided for) by them, the same may be holden on any day thereafter, and the said mayor and alderman of said town shall see that due notice is given, and the election or vote had which may have been neglected or omitted to be held or had, in this act required of them. And in case of the failure or neglect after this charter shall take effect of the city council, at any time, to hold or cause to be held an election or vote to be had which may be required of them, the same shall work no forfeiture of this charter; but such election or vote may be had at some future time thereafter as may be provided for by said city council, nor shall the office of mayor, alderman nor any other office become vacant by such failure; but the incumbent of such office, if otherwise qualified, shall continue and be entitled to all the rights and privileges of said office, and exercise the same until his successor shall be duly elected or appointed and qualified.

Approved, February 5, 1851.

AN ACT TO AMEND THE ACT TO INCORPORATE THE CITY OF DAVENPORT

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That the charter of said city be so amended as to include and embrace within the limits of said city the following described tracts or parcels of land, to wit : A tract or block of land, bounded on the west by Rock Island street, on the north by Sixth street, on the east by Iowa street, and on the

south by Fifth street, of said city; also, all the land included within the following described limits, to wit : bounded on the west by Rock Island street, on the north by Third street, on the east by Iowa street, and on the south by Second street, of said city; also the following tract of land, to wit : bounded on the east by the original town of Davenport, on the south by Green's addition to Davenport, and on the west by Cook and Sargent's addition thereto, and on the north by the land and addition of G. C. R. Mitchell; the tract of land hereby added to said city of Davenport, being known as the land of Samuel Hirschl. Also, the following tract of land, to wit : beginning on Second street of said city, at or near the north-west corner of block No. one (1) in the original town of Davenport, thence running west on the south line of said Second street, to a point due south of the south-west corner of Cook and Sargent's first addition to said city; thence south to the Mississippi river; thence east along the meanders of said river to the south-west corner of said block No. one (1); thence north along the west side of said block No. one (1), to the place of beginning. All of which foregoing described tracts of land are hereby declared to be within the boundaries of said city of Davenport.

2. Tracts of land laid off into town lots adjoining to the present boundaries of said city, shall be a part of said city, whenever the same are duly recorded as required by law.

3. This act is to be in force from and after its publication for two successive weeks in the Banner and Gazette, printed in the said city of Davenport : *Provided*, said publication shall be at the expense of said city.

Approved, January 24, 1853.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE CITY OF DAVENPORT"

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That all that district of country embraced with-

in the following boundaries, be and the same hereby is declared to be within the limits of the said city of Davenport, to wit : Beginning in the middle of the main channel of the Mississippi river, at a point due south of the east line of the lands reserved by the Government of the United States, and donated to Antonio LeClaire, and known as LeClaire's Reserve, in township number seventy-eight north, of range three, east; thence north along the eastern boundary of said reserve, due north to the east and west central or half section line of section number twenty-four; thence west on said central or half section line to the north west corner of the south west quarter of section number twenty-three in said township; thence south on the section line lying between sections twenty-two and twenty-three, and sections twenty-six and twenty-seven, to the county road known as the Telegraph road; thence along the north side of said road to the north and south central line of section number twenty-seven; thence due south to the middle of the main channel of the Mississippi river, and thence up the middle of said channel of said river to the place of beginning.

2. In platting and laying off lots within the limits aforesaid, the proprietors thereof shall make the streets at least eighty feet wide, and the alleys at least twenty feet wide, and every individual or company owning within the above described limits forty acres, or more, in any one body, shall, in laying it out into blocks or lots, lay off at least one public square, to contain not less than two and three-fourths acres of land; said public squares to be enclosed and ornamented similar to other public squares in said city, by the city authorities, within three years after the laying out and recording the same.

3. The city council shall, prior to the next annual election for officers of said city, divide said city into such number of wards as to said council may seem proper; at the first election for Aldermen, it shall not be necessary that the person or persons elected shall have been a resident of said city three months prior to the election; at the first annual election held after the

passage of this act, all persons residing within the district which, by this act, is annexed to the city of Davenport, who are entitled by law to vote for State officers, shall be entitled to vote for city officers.

4. Said city of Davenport is hereby constituted one road district, to be under the control and superintendence of one or more street Commissioners, to be appointed by said city Council, who shall hold their office during the pleasure of the city Council, and not less than one half of all taxes levied by the city authorities, and the road tax levied by the county authorities for road purposes against the several districts which are annexed to the city of Davenport by this Act, or that may hereafter be annexed by extending the limits of said city, shall be expended on the streets and roads of said annexed districts, and all taxes levied by the county of Scott for road purposes, upon the property within the said city, shall be collected by said street commissioner or commissioners in each, whose receipt shall discharge the property or person on the county books, from so much as he shall pay to the extent of the road tax so levied upon such property or against such person.

5. The county Judge of said county of Scott, or such other officer as shall have charge of the books of said county, shall each year furnish to said city council a list of the road tax levied against the property or persons within said city, for which he shall be allowed a reasonable compensation by the city council; and it shall be the duty of the officers collecting county taxes in Scott county, to pay over to the Treasurer of said city all the moneys collected on such list so to be furnished as aforesaid, which shall be expended on the roads and streets of said city, and within one and a half miles of the city limits; but this provision shall not extend to the road tax on the property of residents of the city which is not within the city limits.

6. The city council shall have the power to appoint a street commissioner or commissioners, a city assessor and such sub-

ordinate officers as they may deem proper, to hold their offices during the pleasure of the city council, or they may provide by ordinance for their election. The city clerk, marshal, or treasurer, may be removed by the city council when, in their opinion, they are incompetent or neglect to discharge their duties, and in case of such removal, they may appoint a successor until the next annual election.

7. The debts heretofore created and bonds issued by the said city of Davenport, amounting to the sum of one hundred and twenty-five thousand dollars, are hereby declared legal and binding upon the said city, and the said city council shall have the right to borrow money and issue bonds, which shall be binding upon the city; provided, that no debt shall be created, the yearly interest upon which, together with the yearly interest upon any debt before created, shall exceed three-fourths of the ordinary yearly revenue, unless the contracting of said debt shall be approved by a majority of the voters of said city, who may vote upon the question to be submitted by the city council, in such manner as said city council may direct.

8. Whenever there is a deficiency in the ordinary revenue of the city, after the payment of the ordinary city expenses, to pay the semi-annual interest on the debt already created, the city council shall levy a specific tax upon the assessment roll of the current year, to pay said interest.

9. All the powers provided in the code for the organization of cities, are hereby conferred on the city of Davenport.

10. The said city council shall have power and authority to levy a specific tax on the property of the fourth ward of said city, as organized prior to the passage of this act, for the purpose of raising means to pay off the indebtedness of said ward as a separate road district, and to collect the same as other taxes are collected in said city.

11. All Acts and parts of Acts inconsistent with the provisions of this Act, be and the same are hereby repealed.

12. This act shall take effect and be in force from and after

its publication in the "Gazette," "Banner," and "Commercial," newspapers printed in the city of Davenport, at the expense of said city.

Approved January 22d, 1855.

AN ACT TO AMEND AN ACT ENTITLED AN ACT TO
INCORPORATE THE CITY OF DAVENPORT,
AND AMEND THE SEVERAL ACTS
AMENDATORY THERETO

Section 1. *Be it enacted by the General Assembly of the State of Iowa*, That all that district of country embraced within the following boundaries be, and the same is hereby declared to be within the limits of the said city of Davenport, to wit : Beginning in the middle of the main channel of the Mississippi river, due south of the central or half section line of section number thirty, in township seventy-eight, north of range four east, thence north along said central line to the line between sections nineteen and thirty, thence west along said section line and the southern boundary line of section twenty-four in township seventy-eight, north of range three east, to a point due north of the north-east corner of the tract of land reserved by the government of the United States, and donated to Antoine Le Claire, and known as Le Claire's reserve, in said township seventy-eight, north range three east, thence north to the east and west central or half section line of section twenty-four in said last mentioned township, thence west on said central or half section line to the north-west corner of the south west quarter of section twenty-three, thence south to a point half way between said corner and the south-east corner of section twenty-two, thence west to the western boundary line of said south east quarter of section twenty-two, thence south to the county road known as the telegraph road, thence westerly along the north side of said road to the section line between sections twenty-seven and twenty-eight, thence south

to the south-west corner of the north west quarter of section thirty-four, thence east to the south-east corner of said quarter section, thence south to the middle of the main channel of the Mississippi river, and thence up and along the middle of the main channel thereof to the place of beginning.

Sec. 2. The city council shall have power by ordinance to levy and collect a special tax on the owners of lots, on any street, lane, avenue, alley or block, or the side of a block fronting or lying on any alley, or part of any street, lane, avenue or alley, according to their respective fronts owned by them, for the purpose of paving or grading the side walks, grading, paving or macadamizing such streets, lanes, avenues and alleys, or parts thereof, and for lighting the same, on being petitioned so to do by the owners of more than half the property so to be taxed.

Sec. 3. In case of the sickness of the mayor or of his absence from the city for a less period than two months, said city council may elect one of the aldermen mayor *pro tem*, who shall possess all the authority and perform all the duties of the office of mayor during such sickness or temporary absence of the mayor.

Sec. 4. From and after the passage of this act, it shall not be lawful for the county authorities of Scott county to levy a road tax on any property or a road poll tax on residents in said city; and the said city council is hereby authorized to levy and collect the road tax, if not more than three mills on the dollar, on all property liable to road tax within said city, the collection and payment thereof into the city treasury to be regulated by ordinance of the said city council.

Sec. 5. The said city of Davenport shall have the right of appeal to the district court of Scott county from decisions in all cases arising under the provisions of the charter of said city and the amendments thereto or of any ordinance passed in pursuance thereof.

Sec. 6. The city council shall have power to lay out public

squares or grounds, streets, alleys, lanes or highways, and to make wharves in the river, and alter, widen, contract, straighten, and discontinue the same. They shall cause all streets, alleys, lanes, highways, or public squares, or grounds laid out by them, to be surveyed, described, and recorded in a book to be kept by the clerk, showing particularly the proposed improvements and the real estate required to be taken therefor, and the same when opened and made shall be public highways.

Sec. 7. Whenever any street, alley, lane, highway, or public square, or ground, is laid out, altered, widened, or straightened, by virtue hereof, the city council shall give notice of their intention to appropriate and take the land necessary for the same, to the owner or owners thereof, by publishing said notice for ten days, in some newspaper published in said city, at the expiration of which time, they shall choose by ballot three disinterested freeholders residing in said city as commissioners, to ascertain and assess the damages and recompense the owners of such lands respectively, and at the same time to determine what persons will be benefitted, and assess the damages and expenses thereof on the real estate of persons benefitted, in proportion as nearly as may be the benefits resulting to each. A majority of all the aldermen authorized by law to be elected, shall be necessary to the choice of such commissioners : *Provided*, that the provisions of this section shall not apply in any case where such street or alley has already been ordered to be opened and the damages are not yet paid.

Sec. 8. In any case where a grade has been established by the city engineer, and any person has built or made any improvements on a street according to said grade, and the city authorities shall alter said grade in such a manner as to injure or diminish the value of said property said city shall pay to the owner or owners of said property so injured, the amount of such damage or injury.

Sec. 9. Said damage or injury shall be assessed by three persons, one of whom shall be appointed by the mayor of said

city, one by the owner of the property, and one by these two so appointed, or in case of their disagreement, by the Mayor and owner, or in case of their disagreement by the city council : *Provided*, That if the owner of such property shall fail to appoint one such appraiser in ten days from the time of receiving notice so to do, then the city council shall appoint all said appraisers, and no such alteration of grade shall be made until said damages so assessed shall have been paid or tendered to the owner or owners of the property so injured or damaged.

Sec. 10. The commissioners shall be sworn faithfully to execute their duties according to the best of their ability. Before entering upon their duties they shall give notice, to the persons interested, of the time and place of their meeting, for the purpose of viewing the premises and making their assessment, at least ten days before the time of said meeting, by publishing the same in some newspaper published in said city. They shall view the premises, and in their discretion receive any legal evidence, and may adjourn from day to day.

Sec. 11. If there should be any building standing in whole or in part upon the land to be taken, the commissioners, before proceeding to make their assessment, shall first estimate and determine the whole value of such building to the owner, aside from the value of the land, and the injury to him in having such building taken from him; and secondly the value of such building to him to remove.

Sec. 12. At least five days personal notice shall be given to the owner, of such determination, when known and a resident of the city, or left at his usual place of residence. If not known, or a non-resident, notice to all persons interested shall be given by publication for ten days in some newspaper of said city. Such notice shall be signed by the commissioners, and specify the building and the award of the commissioners. It shall also require parties interested to appear on a day therein named, or give notice of their election to the city council, either to accept the award of the commissioners, and allow

such building to be taken with the land condemned or appropriated, or of their intention to remove such building at the value set thereon by the commissioners, to remove. If the owner shall agree to remove the building, he shall have such time for the removal as the city council may allow.

Sec. 13. If the owner refuse to take the building at the value to remove, or fail to give notice of his election as aforesaid, within the time prescribed, the city council shall have power to direct the sale of such building at public auction, for cash, giving ten days public notice of the sale. The proceeds of the sale shall be paid to owner, or deposited to his use.

Sec. 14. The commissioners shall thereupon proceed to make their assessment and determine and appraise to the owner or owners the value of the real estate appropriated for the improvement, and the injury arising to them respectively from the condemnation thereof, which shall be assessed to such owners respectively, as damages, after making all due allowances therefrom, for any benefit which such owners may respectively derive from such improvement. In the estimate of damage to the land, the commissioners shall include the value of the building, (if the property of the owner of such land) as estimated by them as aforesaid, less the proceeds of the sale thereof, or if taken by the owner, at the value to remove; in that case they shall only include the difference between such value and the whole estimated value of such building.

Sec. 15. If the lands and buildings belong to different persons, or if the land be subject to lease, or mortgage, the injury done to such persons respectively may be awarded to them by the commissioners, less the benefits resulting to them respectively from the improvement.

Sec. 16. Having ascertained the damages and expenses of such improvement as aforesaid, the commissioners shall thereupon apportion and assess the same, together with the costs of the proceedings, upon the real estate of them deemed benefitted, in proportion to the benefits resulting thereto from the im-

provements, as nearly as may be, and shall describe the real estate upon which their assessment may be made. When completed, the commissioners shall sign and return the same to the city council within forty days of their appointment.

Sec. 17. The clerk shall give ten days notice in some newspaper of said city that such assessment has been returned, and on a day to be specified therein, will be confirmed by the city council unless objections to the same are made by some person interested. Objections may be heard before the city council, and the hearing may be adjourned from day to day. The council shall have power in their discretion to confirm or annul the assessment, or refer the same back to the commissioners. If annulled, all the proceedings shall be void. If confirmed, an order of confirmation shall be entered, directing a warrant to issue for the collection thereof in accordance with the provisions of any ordinance then in force, regulating the collection of such assessments. If referred back to the same or other commissioners, they shall proceed to make their assessments and return the same in like manner and give like notices as herein required in relation to the first, and all parties in interest shall have the like notices and rights, and the city council shall perform like duties and have like powers in relation to any subsequent determination as are herein given in relation to the first.

Sec. 18. The city council shall have power to remove commissioners, and from time to time appoint others in the place of such as may be removed, refuse, neglect, or be unable, from any cause, to serve.

Sec. 19. The land required to be taken, for the making, opening, or widening any street, alley, lane, or any other highway, shall not be appropriated until the damages awarded therefor to any owner thereof under this act shall be paid or tendered to such owner or his agent, or in case the said owner or his agent cannot be found in said city, deposited to his or their credit in some safe place of deposit other than the hands

of the treasurer, and then, not before, such lands may be taken and appropriated for the purpose required in making such improvements, and such streets, alleys, lanes, highways and squares, may be made and opened.

Sec. 20. Where the whole of any lot or parcel of land or other premises, under lease or other contract, shall be taken for any of the purposes aforesaid, by virtue of this act, all of the covenants, contracts, and engagements between landlords and tenants, or any other contracting parties, touching the same, or any part thereof, shall, upon confirmation of such report, respectively cease, and be absolutely discharged. Where part only of any lot or parcel of land or other premises under lease or other contract, shall be taken for any of the purposes aforesaid, all the covenants, contracts, agreements and engagements respecting the same upon confirmation of such report, shall be absolutely discharged as to the part thereof so taken, but shall remain valid as to the residue thereof, and the rents, considerations and payments reserved, payable and to be paid for, or in respect to the same, shall be so proportioned as that the part thereof justly and equitably payable for such residue thereof, and no more, shall be paid or recoverable for in any respect of the same.

Sec. 21. Any person interested may appeal from any final order of the city council for opening or widening any street, alley, lane, public ground, or highway, to the district court of Scott county, by notice in writing to the mayor or clerk, at any time before the expiration of twenty days after the passage of such final order. In case of appeal, the city council shall make return within thirty days after notice thereof, and the court shall at the next term after return filed in the office of the clerk thereof, hear and determine such appeal, and confirm or annul the proceedings. Upon trial of the appeal, all questions involved in said proceedings, including the amount of damages, shall be open to investigation by deposition or oral testimony, and the burden of proof shall in all cases be upon

the city to show that the proceedings are in conformity with this act.

Sec. 22. In all cases when any known owner residing in said city or elsewhere, shall be an infant, and any proceedings shall be had under this act, the district court, or the judge thereof, or the county judge of Scott county may, upon the application of the city council, or such infant, or his next friend, appoint a guardian for such infant, taking security from such guardian for the faithful execution of such trusts; and all notices and summons required by this act shall be served on such guardian.

Sec. 23. Nothing herein contained, or in the acts to which this is amendatory, shall authorize the city council to discontinue or contract any street, lane, alley or highway, or any part thereof, without the consent, in writing, of all persons owning land adjoining said street, lane, alley or highway.

Sec. 24. In all cases where there is no agreement to the contrary, the owner, or landlord, and not the occupant or tenant, shall be deemed the person who ought to pay and bear every assessment made for the expense of the public improvement. Where any such assessment shall be made upon or paid by any person, when by agreement or by law, the same ought to be borne or paid by another person, it shall be lawful for one so paying to sue for and recover of the person bound to pay the same, the amount so paid, with interest. Nothing herein contained shall impair or in any way affect any agreement between any landlord and tenant or other persons respecting the payment of such assessments.

Sec. 25. Said city council is hereby authorized to grant and allow by ordinance, such compensation to the aldermen of said council for their services as shall be approved by a vote of two-thirds of all the members elected.

Sec. 26. At the first election for mayor and aldermen after the taking effect of this act, and every second year thereafter, there shall be elected by the legal and qualified voters of said

city a justice of the peace, who shall reside in and be a qualified voter of said city, who shall be called a police magistrate, who shall have and possess all the powers and jurisdiction of other justices of the peace in Scott county and concurrent jurisdiction with the mayor of said city in all cases arising under the ordinances of said city, who shall take the same oath of office and qualify as other justices of the peace of Scott county and who shall hold his office for the term of two years and until his successor is elected and qualified.

Sec. 27. That the whole of article seven of said act to incorporate the city of Davenport, and all other acts and parts of acts inconsistent with the provisions of this act, be, and the same are hereby repealed.

Sec. 28. This act to be in force and take effect from and after its publication in the Davenport Gazette, Iowa State Democrat, and Evening News, or any two of them, at the expense of the city of Davenport.

Approved January 23, 1857.

APPENDIX C : THE CAMANCHE CHARTER

[Camanche is the smallest town operating under a special charter, having a population according to the *Federal Census, 1920*, of 610. The charter quoted below was enacted by the legislature in 1857 and was not amended. The reference for the charter may be found in Appendix A.
— EDITOR.]

AN ACT TO INCORPORATE THE CITY OF CAMANCHE

Section 1. *Be it enacted by the General Assembly of the State of Iowa*, That all that portion of the State of Iowa, included within the following limits, to wit : Commencing at the centre of ninth avenue and Eighth street, as laid down and platted by the Camanche land company; thence running along the centre of Eighth street to the intersection of the centre line of said street, and the section line between section twenty-eight (28) and twenty-nine (29), township eighty-one (81), range six east of the fifth principal meridian; thence thirty-nine hundred and sixty feet; thence south to the middle of the main channel of the Mississippi river; thence up and along the middle of said main channel to the centre line of ninth avenue; proceed thence along said centre line to the intersection of said eighth street and ninth avenue to the place of beginning, be, and the same is hereby declared a city, and the inhabitants thereof are created a body corporate and politic, by the name and style of Camanche, and by that name shall have perpetual succession, and shall have and use a common seal which they may alter and change at pleasure.

Sec. 2. The said city is hereby divided into two wards, as follows : That part of the city which lies north and east of the centre of Chicago street, shall be the first ward; and that

part lying south and west of Chicago street shall be the second ward : *Provided*, that the city council may change, unite, or divide the said wards, or any of them, whenever they shall think it for the interest of the city.

Sec. 3. On the passage of this act, the county judge shall order an election for the purpose of submitting this charter to the citizens of said city, which election shall take place on the first Monday in March, A. D. 1857, and shall be conducted in all respects as now provided by law, the township trustees conducting said election as in other cases. The return of said election shall be made to the county judge, and in the event that a majority of all the votes polled are in favor of said charter, then it shall be the duty of said judge to order and provide for an election in each ward in said city, to be held at such places as he may think proper, for the election of the officers as provided in section seven, which election shall be held on the first Monday, in April, A. D. 1857, and shall be conducted in all respects as now provided by law, and returns made to the county judge, whose duty it shall be to notify the persons elected to the respective offices named in section seventh of this charter, who shall enter upon their duties as prescribed by this act, or by ordinance of the city council.

Sec. 4. All legal voters are declared citizens of said city, and are entitled to vote at all elections thereof.

Sec. 5. All persons offering to vote may be challenged as in township and State elections.

Sec. 6. No person shall be eligible to the office of mayor unless he be a citizen of the city and resident thereof six months preceding his election, nor shall any person be eligible to any other office mentioned in this act unless he be a citizen of the city, and have been a resident thereof six months preceding his election.

Sec. 7. The officers of the city shall be a mayor, two aldermen from each ward, one marshal and recorder, one treasurer, one assessor, and one wharf-master, for the choice of whom an

election shall be holden annually, on the first Monday in April, and each of whom shall hold his office for the term of one year, (except in the case of aldermen) as hereinafter provided, and until their successor is elected and qualified.

Sec. 8. Two aldermen shall be elected in each ward, and such one of the two as receives at the first election the highest number of votes, shall hold his office for the term of two years, and the other one year; and thereafter one shall be elected each year in each ward, to hold his office for the term of two years. If there be a tie vote in the above case, the matter shall be determined by lot.

Sec. 9. It shall be the duty of the mayor to see that all the laws and ordinances of the city are executed and their violation punished, to superintend and direct the official conduct of the subordinate officers, to sign and seal all commissions, licenses, permits granted by the city council, and to perform such duties and exercise such powers as pertain to the office of mayor of a city, and such as may be granted or imposed by the ordinances of the city, consistent with law.

Sec. 10. He shall be a conservator of the peace within the city, and ex-officio a justice of the peace, and is invested with exclusive original jurisdiction for the violation of ordinances of the city, and with criminal jurisdiction of offences against the laws of the State, committed within the city, and civil jurisdiction limited to the city in the same manner as that of justices is or may be limited to their township; he shall not be disqualified from acting in such judicial capacity by any proceeding being in the name of, or in behalf of the city: *Provided*, That in case of inability of the mayor of Camanche to act as a justice or conservator of the peace, or to perform the judicial duties of his office, whether said inability arise from sickness, absence from home, or any other cause, any justice of the peace of Camanche township may take cognisance and jurisdiction arising under any of the ordinances of said city, such inability being entered of record of the justice acting

in such cases; he shall be entitled to demand [and] receive in civil actions, and in actions for the breach of the laws of the State, such fees as are at the time allowed by law justices of the peace.

Sec. 11. Appeals to the district court in the same county shall be allowed from the judgment and decision of the mayor, in the same cases, time, and manner as they are at the time allowed by law, from those of other justices, and they shall be tried in the same manner.

Sec. 12. He shall be the presiding officer of the city council when present, and shall give the casting vote when there is a tie; in his absence the council may appoint one of their own number president for the time being, who shall have authority to sign ordinances, and orders on the treasury, and to administer oaths, and to do all other things pertaining to the office of mayor, except as a justice of the peace, stating in connection with the signature, in the absence or inability of the mayor.

Sec. 13. The recorder is required to keep a true record of all the official proceedings of the council, and such records shall at all times be open to the inspection of any citizen, and he shall perform such other duties as may be required by the council.

Sec. 14. The marshal is made a conservator of the peace; he is the executive officer of the mayor's court, and shall execute and return all proceedings directed to him by the mayor, and in cases for the violation of the criminal laws of the State, and of the ordinances of the city, may execute such process in any part of the county; he is invested with the same authority within the city, to quell riots and disturbances, to prevent crimes, and to arrest offenders, that the sheriff has in his county; he shall perform such other duties as the council prescribe, and, with its approval, may appoint one or more deputies, for whose official acts he shall be responsible, and whom he may discharge; for the service of legal process, he shall be entitled to the same fees as a constable; and for ser-

VICES required by the council, such compensation as it may allow.

Sec. 15. The legislative authority of the city is vested in a city council, consisting of the mayor and a board of aldermen, composed of two from each ward of the city.

Sec. 16. The council may hold meetings as it sees fit, having stated times fixed, or having provided by ordinances for the manner of calling them.

Sec. 17. A majority of the council shall be necessary to form a quorum; it shall be the judge of the election and qualifications of its own members; it shall determine the rules of its own proceedings; it may compel the attendance of its members at its meetings in such manner and by such penalties as it may adopt, and it shall cause a record of all its proceedings to be kept.

Sec. 18. First. The council is invested with the following powers : To make ordinances to secure the inhabitants against fire, against violation of the law and public peace; to suppress riots, drunkenness, gambling, and indecent and disorderly conduct, and generally to provide for the safety, good order and prosperity of the city, and the health, morals and convenience of the inhabitants.

Second. To impose penalties for the violation of its ordinances, not exceeding one hundred dollars, which may be recovered by civil action in the name of the city, or by complaint before the mayor, as in case of complaint before a justice of the peace, and the laws of the State in relation to carrying into effect a judgment of a justice of the peace, under complaint, shall be applied to judgments in the above cases, that the charges thereof be paid by the city.

Third. To establish and organize fire companies, and to provide them with engines and other apparatus.

Fourth. To regulate the keeping of gunpowder within the city, and to provide that no building of wood shall be erected in such parts of the city as may be designated, and to declare such buildings a nuisance and cause their removal.

Fifth. To remove obstructions from, and have entire control of the landing of the Mississippi river, and to build wharves and regulate the landing, wharfage and dockage of boats and all other water crafts, goods, lumber, and other things, landed at or taken from the same : *Provided*, That nothing in this section shall be so construed as to effect the right of the State or counties, or to prevent the county of Clinton from granting ferry charters in said county.

Sixth. To exercise exclusively the power to provide for the license, regulation or prohibition of exhibitions, shows, and theatrical performances, billiard tables, balls and ten-pin alleys, and places where any games of skill or chance are played; but this power extends to no exhibition of a purely literary, scientific or artistical character, and when the laws of the State permit license for the sale of intoxicating liquor, that subject shall be within the exclusive authority of the council, and it may at all times prohibit the retail of the above liquors, unless such prohibition would be inconsistent with the laws of the State at the time existing, and it may revoke or suspend any of the licenses above mentioned, when it deems the good order and welfare of the city requires it.

Sec. 19. First. The city council shall have power to make all requisite ordinances in relation to the cleanliness and health of the city.

Second. To regulate cartage and drayage within the city, and may license therefor, and may also make prohibition of all animals running at large within the city.

Third. That the city council shall have power whenever they deem it expedient for the public interest of said city, to open and extend streets and alleys, to alter the width, course or grade of any of the streets and alleys of said city, and to vacate the same.

Fourth. That if any property holden in said city shall be injured by any such alteration, such person may make application to the board or council for the assessment of damages,

whereupon such applicant shall give ten days' notice in some newspaper published in said city, in case the claimant be a resident of said city, or twenty days, in case such claimant be a non-resident, stating the time and place of meeting, and the object of the same, and at the time specified in said notice, said councilmen shall proceed to view and assess the damages, if any, done by reason of such alteration, taking into consideration the advantages and disadvantages of such alterations and improvements, and shall within five days thereafter make an award and return the same to the county judge of Clinton county, who shall enter judgment thereon (if approved) and such judgment shall be final.

Sec. 20. That the city of Camanche shall constitute one permanent school district, not subject to alteration by the school fund commissioner, and shall be subject to the control of the city council of said city, who shall provide for the adequate support and maintenance of common schools in said district, and so much of the code of Iowa as require regular meetings of each school district on the first Monday of May and October of each year, and so much thereof as requires the election of trustees in each school district, is hereby declared inapplicable to said district. The city council of said city shall by ordinance provide for the appointment or election, as they may consider most proper, of a board of education in said district, and shall invest in said board the necessary power for the proper care and management of the common schools in said district, the employment of teachers and the supervision of schools, and provide for the taking and returning to the proper officers, as required by law, of the number of persons in said district between the ages of five and twenty-one years, and the performance of such other duties as may seem necessary for the proper discharge of the duty hereby imposed upon said council.

Sec. 21. That the city council of said city shall furnish all necessary additional school houses for the support of common

schools in the said district, and for that purpose shall levy and collect, in the same manner as other moneys for current expenses in said city, such sum of money as may be necessary therefor, and for the necessary repair and improvement of the same; but the sum levied in any one year shall not exceed the rate of one-half of one per cent. on the assessment of such year, and the city council are authorized and directed, when necessary, to borrow in anticipation of such tax, the amount necessary for the purchase of school lots and the erection of school houses thereon, but not to exceed the sum of ten thousand dollars, and to give the bonds of the city therefor, to be repaid by the tax so levied and collected as aforesaid for the purpose aforesaid.

Sec. 22. That the city council shall have power, by their order on the school fund commissioner of the county of Clinton, to receive from him, for the use of said district, all monies appropriated to said district from the school fund; and in addition thereto, shall in each year levy and collect, in the same manner as other monies for current expenses, such further sum, but not to exceed in any one year the rate of five mills on each dollar for the assessment of such year, as may be, with the fund received from the school fund, adequately to provide for the payment of necessary teachers' wages and incidental expenses in maintaining common schools in said city, arising the current year.

Sec. 23. That all monies received by the city council from the said school fund commissioner, or collected in pursuance of any tax by this act authorized, shall be paid into the city treasury, and a separate account thereof shall be kept by the treasurer and recorder, and no monies shall be drawn therefrom only to be appropriated to the special purpose for which the same was received or collected, and shall only be paid on order in which said purpose is stated; and the city council shall provide for the publication, at least once in each year, for the information of all persons, of a full statement of all

receipts and expenditures for school purposes, during the current year, and which shall show the number of schools kept, the number of teachers employed, the wages paid, the whole number of persons in attendance, and the time such schools have been held during the current year.

Sec. 24. The city of Camanche is hereby constituted a special road district, and the city council shall have power, in addition to the taxes otherwise authorized to levy road taxes not exceeding the amount allowed to be levied by the county court, and may provide for the payment and collection of the same, in the same manner as other taxes for current expenses; they may also provide for the manner in which all such taxes shall be expended on the streets and highways in said city, and all persons and property rightfully taxed within said city, in accordance with this section, are thereby exempt from all taxes for roads to the county.

Sec. 25. The city council, or such officers as they may appoint, shall have exclusive jurisdiction and control of said special road district.

Sec. 26. The city council is authorized to levy and collect taxes not exceeding one-half of one per cent., in any one year, on the value of all property within the city, which is liable for State and county taxes, including improvements on real property, to carry into effect the provision of this act; the council may also levy a tax on dogs; the latest assessment rolls shall form the basis of assessment, but the city assessor may add thereto any property omitted, assessing the same himself.

Sec. 27. The city council shall make out a duplicate of taxes in proportion to the valuation of each individual in said city, on or before the first day of May, in each year, to be signed by the mayor, and countersigned by the recorder, which duplicate shall be delivered to the collector of said city, whose duty it shall be to proceed to collect the same within each [such] time and in such manner as the ordinances of said city shall require, and to pay over the amount of such taxes, so

collected, upon the order of the city council, signed and countersigned in the same manner as provided for such duplicate, provided that the said council shall have power, on the complaint of any person aggrieved, to correct or amend any illegal or erroneous assessment before making out and delivering such duplicate to the collector.

Sec. 28. The collector shall have power to sell personal property, and for want thereof, to sell real estate, for the non-payment of taxes within said city, giving the purchaser a certificate of such sale, setting forth a brief description of the property sold, and at what time he will be entitled to a deed, which certificate shall be assignable by endorsement thereon, but no real estate shall be sold for the non-payment of such taxes, unless the assessment of such tax or taxes shall have been duly notified by publication for at least six consecutive weeks, prior to such sale, in some newspaper published in said city, or by notice posted for the same length of time in some public place in each ward thereof.

Sec. 29. All real estate sold under or by virtue of section 28, may be redeemed by the owner thereof, by paying the amount of the taxes for which the same was sold, at any time within one year from the date of the sale thereof, together with the costs of advertising and sale, and fifty per cent interest upon the whole amount of such taxes and costs : but if any real estate so sold remain unredeemed to the expiration of one year from the date of the sale thereof, the collector of said city shall, upon the payment of a fee of one dollar to him by the purchaser of such real estate, at such sale, his assignee or legal representative, make, execute, and deliver a deed of such real estate to the said purchaser, his assignee or legal representative.

Sec. 30. The council shall audit all claims against the city, provide for the keeping of the public money of the city, and the manner of drawing the same from the treasury, and all officers of the city shall be accountable to the council in such

manner as it directs; it shall be the duty of the council to publish annually a particular statement of the receipts and expenditures of the city, and all debts owing to and from the same.

Sec. 31. The council shall prescribe the manner of calling the meetings of the citizens, except for the election of the officers.

Sec. 32. The council shall have power to appoint, in such manner as they may determine, any and all additional officers necessary to carry into effect any and all of the provisions of this bill, and prescribe their respective duties, powers, qualification and compensations.

Sec. 33. The council shall have power to levy and collect a special tax on the lot or lots, or the owner or owners thereof, on alley, street or highway, or any part of any street, alley or highway, within the city of Camanche, for the purpose of curbing, grading or paving the side-walk in front of such lot or lots respectively; and also for the purpose of repairing the same, or for the purpose of lighting such street, alley or highway, or for the purpose of paving or macadamizing the street, alley or highway, in front of such lot : *Provided*, That in case any special tax is so levied on any lot or lots or the owner thereof, for the purpose aforesaid, such lot or lots, or the owner or owners thereof, in respect thereto, shall not be liable to any other tax, general or special, for making any improvement of the same kind on any other street, alley, or highway, or any part thereof, in said city.

Sec. 34. The council shall have power to borrow money for any object in its discretion, if at any regular notified meeting under a notice stating directly the nature and object of the loan, and the amount thereof, as nearly as practicable, if the citizens determine in favor of the loan by a majority of the votes given at such election, held for that purpose, and such loan can, in no case, be diverted from the specified object.

Sec. 35. Ordinances passed by the city council shall be

signed by the mayor, and attested by the city recorder, and before they take effect be published in one or more newspapers printed in the city, at least ten days; they shall also be recorded in a book kept for the purpose and signed by the mayor and attested by the recorder.

Sec. 36. The city council shall have power to fill all vacancies occurring in their board or other offices, by death, resignation, or otherwise.

Sec. 37. The mayor, aldermen, marshal, treasurer, recorder, and assessor, shall take an oath to support the Constitution of the United States, and of the State of Iowa, and faithfully and impartially to perform their duty to the best of their ability. Other officers shall qualify in such manner as shall be prescribed by the council. The oath of office may be administered by the mayor or recorder, when he is qualified; and in the transaction of the business of the corporation those officers, and the president for the time being, may administer oaths, which shall have the same effect as if administered by other officers authorized thereto.

Sec. 38. Such of the officers as the council may determine, shall give bond in such penal sum, and with such conditions as may be prescribed, and to be approved as required.

Sec. 39. The duties of all the officers, in addition to the duties herein prescribed, shall be such as are provided by ordinance, and they will be entitled to such compensation for their services and subject to such penalties and forfeitures, for violation of duty, as the ordinance may prescribe.

Sec. 40. The marshal shall be the city collector.

Sec. 41. No member of the city council shall be eligible to any office in the gift of the council, during the term for which he is elected, nor shall he be interested, directly or indirectly, in the profits of any contract or job of work, of service, to be performed by the city.

Sec. 42. For all elections for city officers, the mayor is directed to issue a proclamation to the voters of the city, or

of the several wards, as the case may be, naming the time and place or places of the election, and the officers to be chosen, and cause a copy to be posted up in each ward, at least ten days before the election, or instead thereof he may cause a copy to be published in a newspaper published in the city, the same length of time.

Sec. 43. The polls shall be opened, (the council having appointed judges and clerks,) between the hours of eight and ten in the forenoon, and continue open until four o'clock in the afternoon. Within two days after the election the judges of the election shall make their returns to the city council, which shall examine them and cause an abstract of the votes to be recorded in a book kept for the purpose.

Sec. 44. The inhabitants of said city, by the name and style aforesaid, shall be capable in law and equity of contracting and being contracted with, of suing and being sued, pleading and being impleaded, in all courts of law and equity, in all matters whatsoever; of purchasing, using, occupying, enjoying and conveying real, personal and mixed estate in said city; of purchasing, receiving and holding property, real, personal and mixed, beyond the limits of said city, for burial grounds, or for other purposes, for the use of the inhabitants of said city, and shall be competent to have, exercise and enjoy all the rights, immunities, powers and privileges, and be subject to all the duties and obligations incumbent upon and appertaining to a municipal corporation.

Sec. 45. That this act shall be taken and received in all courts and by all judges, magistrates and other public officers as a public act, and all printed copies of the same which shall be printed by and under the authority of the Senate and House of Representatives, shall be admitted as good authority thereof, without any other proof whatever.

Sec. 46. This act shall take effect and be in force from and after its publication in the Iowa Register, published in Camanche.

Approved January 28, 1857.

APPENDIX D : THE BLOOMFIELD CHARTER

[This charter was the shortest one granted by the legislature during the period, 1838-1858. Its terms were very general : merely giving the outline of the government. The population of Bloomfield in 1850 appears to have been less than three hundred : not enough to have allowed it to accept the provisions of the Home Rule Charter found in Appendix V. Reference for Bloomfield's charter may be found in Appendix A. — EDITOR.]

AN ACT TO INCORPORATE THE TOWN OF BLOOMFIELD, IOWA

Section 1. *Be it enacted by the General Assembly of the State of Iowa*, That so much of section twenty-five, in township sixty-nine, north of range fourteen west, as is comprised in the plat of the town of Bloomfield, be and the same is hereby made and constituted a body corporate, under the name and style of the town of Bloomfield, and that said corporation shall have all the rights, powers and duties of corporations, and may sue and be sued, contract and be contracted with in the name of the town of Bloomfield, and have perpetual succession.

2. Said town shall have biennially elected, on the first Monday in February of every two years, one Mayor, five Councilmen, one Recorder, and one Marshal, who shall hold their offices for two years, and until their successors shall be elected and qualified according to law.

The first election herein contemplated, to take place at any time, after ten days from the publication of this Act; provided five days' notice thereof be given by any legal voter of said corporation, through the "Western Gazette."

3. The Mayor of said town shall have exclusive jurisdiction over all crimes committed in the corporate limits of said town,

which have heretofore been punishable before Justices of the Peace, provided nothing herein shall preclude the right of appeal or trial by jury, as authorized by law. He shall preside at all meetings of the council, and defend all civil suits brought by or against said corporation, and shall subscribe all ordinances passed by the council.

4. The Marshal of said town shall be the ministerial officer of the Mayor, and a conservator of the peace, and may exercise the duties of Constable in Bloomfield township.

5. The Recorder shall record the doings and acts of the board of Councilmen, and attest and publish all ordinances passed by the same, and preside in the absence or inability of the Mayor at any meeting of said board.

6. The board of Councilmen of said town shall have power to pass all laws necessary for the government of said town, and prohibit any evil not expressly allowed by the statute regulations of this State, and to make such other municipal regulations as may be necessary for the improvement and benefit of said town, and to levy a tax, not to exceed one per cent., on the taxable property of said town, provided the same be adopted by a majority of the votes thereof, at an election held for such purpose, under such regulations as the board of Councilmen may adopt.

7. The board of Councilmen, in order to prevent any business injurious to the health of said town, or any business disturbing the peace or quiet of said town, may enact ordinances making the house or ground where such business is carried on, responsible for the same, and they may proceed against the same to satisfy any judgment obtained for carrying on such prohibited business, or against the owner thereof, whether occupant or lessor.

8. In case of a vacancy in any of the offices herein contemplated, the same may be filled by appointment by the board of Councilmen, or by election by the legal voters, conducted by such regulations as the board may adopt.

9. In order to carry out the regulations and enforce the ordinances of said town, the Councilmen may appoint a Prosecutor for the town, or employ one at their own discretion.

10. The first election in contemplation may be conducted by any persons appointed for that purpose by the County Judge of Davis county, Iowa, and subsequently by the Mayor and Recorder, and any three of the Council, or by persons appointed by the Mayor for that purpose.

11. The board of Councilmen may create such officers as they may deem necessary, from time to time, to carry out the intent of any ordinance passed by said town.

12. All former charters or articles of incorporation coming in opposition to this Act, are hereby repealed.

13. This Act shall take effect from and after its publication in the Bloomfield, Iowa, "Western Gazette," of Bloomfield, Iowa.

Approved January 13th, 1855.

APPENDIX E : THE HOME RULE CHARTER

[This charter is reproduced to give the reader more definite data relative to this legislative home rule charter which was in force in Iowa from 1851 to 1858. The document as quoted below is taken from the *Code of 1851*, Ch. 42, pp. 105-108.—EDITOR.]

THE INCORPORATION OF VILLAGES AND TOWNS

649. Any village containing three hundred inhabitants may become incorporated as a town, and any town or village containing two thousand inhabitants may become incorporated as a city, in the manner herein prescribed.

650. In making the enumeration for the purpose above contemplated those persons only shall be included who are permanent residents within the limits of the plat of the village or town.

651. Where the inhabitants of a village having no previous organization desire to be incorporated they must by petition apply for that purpose to the county court stating whether they desire a town or city organization, and must satisfy the court that their village contains the requisite number of inhabitants.

652. Such proof being made and the petition being signed by at least one-fourth of the legal voters of the village the court shall direct the question to be submitted to a vote of the people.

653. The vote shall be "for incorporation" or "against incorporation," and returns shall forthwith be made to the county court.

654. If the majority of the votes cast by the legal voters is in favor of incorporation the court must fix upon the time

and place of an election to choose persons to prepare a charter, or articles of incorporation, for the village.

655. The number of persons thus to be chosen must be fixed upon by the court.

656. Returns of the election shall be made to the county court which shall cause notice of their election to be given to the persons elected.

657. The charter shall provide, among other things:

First. — For the time when it shall take effect;

Second. — For the manner in which it may be altered;

Third. — It shall specify the powers to be given to the corporate authorities within the limits hereinafter prescribed.

658. The charter thus formed must be submitted to a vote of the people of the village, and if it receive the sanction of a majority of the legal votes for and against it it shall be considered as adopted, and an entry thereof shall be made on the county records.

659. In the election herein contemplated, unless provision is otherwise made, the county court must fix upon the time and prescribe the notice to be given thereof, appoint the judges and clerks of the election, and in general prescribe all the means necessary to carry the intent of this chapter into effect.

660. Vacancies in the number of the judges and clerks are to be supplied in the same manner as at the general election.

661. Returns in each of the above cases must be made to the county court which shall give certificates of election and have power to try and decide any case of contested election where notice of such contest is given before the granting of such certificates.

662. When an incorporated town desires to be organized as a city such steps must be taken to obtain an expression of the will of the people on the subject, to draft a charter, to obtain its adoption, and to fix the time of its taking effect, as the board of trustees or other local legislature may direct, but no

charter shall be adopted without the sanction of a majority of the voters at a public election held for that purpose.

663. A town charter may provide for a local legislature under such name as may be selected and such other officers as may be deemed expedient, may prescribe and limit the powers and duties of each, and may fix the mode of their election and removal, their term of service, and their compensation.

664. The charter may confer upon the corporation the power of dividing the town into wards, enable it to acquire and hold whatever real or personal property may be necessary and proper to carry out the objects of the corporation and to sell and convey the same, to adopt a common seal and to alter the same, and to appear as a party in any civil action.

665. It may also give power to establish such by-laws and ordinances as are necessary and proper for the good regulation, safety, health, and cleanliness of the town and the citizens thereof; to levy and collect taxes on all property within the limits of the corporation which by the laws of the state is not for all purposes exempt from taxation, which tax must not exceed one per cent. per annum on the assessed value thereof, and its collection may be enforced by such measures as may be deemed expedient, provided those measures be not more stringent and summary than those used for the collection of state or county taxes; to establish a grade and regulate and improve the side walks, alleys and streets, and to change the grade, making compensation to any person injured thereby; to provide drains, sewers, public wells, wharves, and landing places and keep them in repair; to regulate markets but not in such a manner as to prevent any person from selling the produce of his own farm in such manner and quantity as he may deem proper; to license and regulate or prohibit all shows or public exhibitions if the laws of the state are not thereby interfered with; to license porters, draymen, and others who transport freight from one part of the town to another, and to limit their compensation; to provide against fires, breaches of the peace,

gambling, disorderly and indecent houses and conduct; and to make any other ordinary, suitable, and proper police regulations and impose penalties for the violation of any such regulations, which penalties may be collected by civil action in the name of the town.

666. The charter may farther authorize the legislative power of the town to require the property holders of any street or part of a street to pave the same or the side walk thereof, each in front of his own property, whenever the owners of two-thirds of the lots in such street or part of a street petition therefor.

667. None of the ordinances or regulations of any town can take effect until they have been duly promulgated so as to be within the knowledge of the inhabitants of such town, the manner of doing which shall be prescribed in the charter.

668. The local legislature may change the name of the town, but not until such change has been sanctioned by the people at a public election, nor can any name be thus given to a town which is not clearly distinguishable from that of any other place within the state.

669. The preceding provisions are applicable to a town desiring to become organized as a city, and in addition thereto a city charter may authorize the establishment of a mayor's court for the enforcement of the city regulations, but the jurisdiction of that court must not be greater than that of a justice of the peace and appeals shall lie the same in all respects as from justice's courts.

670. The city charter may also confer power upon the city authorities to open new streets and discontinue old ones and to dispose of the ground thus rendered unnecessary to the public; to compel the owners of land within the city limits to drain or fill up ponds or stagnant places thereon and prescribe the manner of doing the same; to borrow money on the credit of the city but not without a direct vote of the people in favor of such loan; and on the application of the owners of three-

fourths of any square to prohibit the erection of any except brick or stone buildings within that square; and generally to make any regulations of a like nature with those above authorized, for the order and good government of the city and the welfare of the inhabitants not in conflict with the laws of the state.

671. The above provisions are intended only to fix limits to the power of a town or city corporation, leaving the people, if they choose, the privilege of narrowing those limits as much as may be thought desirable or to fix other conditions in addition to those above required.

672. The authority to confer upon a town or city the power to license and regulate or prohibit shows or public exhibitions, when exercised, will be exclusive; but when no provision is made on that subject in the charter the county court has the same authority within such town or city as it has in other portions of the county.

NOTES AND REFERENCES

NOTES AND REFERENCES

CHAPTER I

- ¹ Aurner's *History of Township Government in Iowa*, pp. 27-32.
- ² See below, note 23.
- ³ Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 24.
- ⁴ Goodnow's *Municipal Government*, p. 68.
- ⁵ Goodnow's *Municipal Government*, pp. 68, 69.
- ⁶ Goodnow's *Municipal Government*, p. 70.
- ⁷ Goodnow's *Municipal Government*, pp. 70, 71.
- ⁸ Fairlie's *Municipal Administration*, p. 72.
- ⁹ Fairlie's *Municipal Administration*, p. 73.
- ¹⁰ Fairlie's *Municipal Administration*, pp. 73, 74.
- ¹¹ Fairlie's *Municipal Administration*, pp. 77, 78.
- ¹² Fairlie's *Municipal Administration*, pp. 78, 79.
- ¹³ Goodnow's *Municipal Government*, p. 80.
- ¹⁴ Goodnow's *Municipal Government*, pp. 80, 81.
- ¹⁵ Goodnow's *Municipal Government*, p. 80; Morford vs. Unger, 8 Iowa 82.
- ¹⁶ *Constitution of Iowa*, 1857, Art. III, Sec. 30.
- ¹⁷ Ogg and Ray's *Introduction to American Government*, p. 746.
- ¹⁸ Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 96.

CHAPTER II

- ¹⁹ *Laws of the Territory of Wisconsin*, 1836-1838, pp. 470, 481.
- ²⁰ *Laws of the Territory of Wisconsin*, 1836-1838, p. 471.
- ²¹ *Laws of the Territory of Iowa*, 1838-1839, p. 248.
- ²² *Laws of the Territory of Iowa*, 1838-1839, p. 265.

²³ Compare the *Laws of Michigan*, 1835-1836, pp. 174-179, 179-184, 184-188; *Laws of the Territory of Wisconsin*, 1836-1838, pp. 481-485; *Laws of the Territory of Iowa*, 1838-1839, pp. 248-252.

²⁴ References to acts of the legislature granting special charters to municipalities named in the text are as follows: Salem, *Laws of the Territory of Iowa*, 1839-1840, p. 72; Dubuque, *Laws of the Territory of Iowa*, 1839-1840, p. 124; Farmington, *Laws of the Territory of Iowa*, 1840-1841, p. 33; Nashville, *Laws of the Territory of Iowa*, 1840-1841, p. 88; Iowa City, *Laws of the Territory of Iowa*, 1840-1841, p. 97.

²⁵ References to acts of the legislature granting special charters to municipalities named in the text are as follows: Davenport, *Laws of the Territory of Iowa*, 1841-1842, p. 41; Mount Pleasant, *Laws of the Territory of Iowa*, 1841-1842, p. 14; Fort Madison, *Laws of the Territory of Iowa*, 1841-1842, p. 74; Keosauqua, *Laws of the Territory of Iowa*, 1841-1842, p. 107.

²⁶ *Laws of the Territory of Iowa*, 1843-1844, p. 156.

²⁷ References to acts of the legislature granting special charters to municipalities named in the text are as follows: Burlington, *Laws of the Territory of Iowa*, 1845, p. 73; Dubuque, *Laws of the Territory of Iowa*, 1845-1846, p. 114.

²⁸ References to acts of the legislature granting special charters to municipalities named in the text are as follows: Farmington, *Laws of Iowa*, 1846-1847, p. 95; Dubuque, *Laws of Iowa*, 1846-1847, p. 104; Fairfield, *Laws of Iowa*, 1846-1847, p. 49; Keokuk, *Laws of Iowa*, 1846-1847, p. 154.

²⁹ *Laws of Iowa* (Extra Session), 1848, p. 64.

³⁰ *Laws of Iowa*, 1848-1849, p. 18.

³¹ *Laws of Iowa*, 1848-1849, p. 116.

³² References to acts of the legislature granting special charters to municipalities named in the text are as follows: Bloomington, *Laws of Iowa*, 1850-1851, p. 59; Davenport, *Laws of Iowa*, 1850-1851, p. 110; Iowa City, *Laws of Iowa*, 1850-1851, p. 84; Mount Pleasant, *Laws of Iowa*, 1850-1851, p. 195; Guttenberg, *Laws of Iowa*, 1850-1851, p. 100; Bellevue, *Laws of Iowa*, 1850-1851, p. 206; Keosauqua, *Laws of Iowa*, 1850-1851, p. 142.

³³ References to acts of the legislature granting special charters to municipalities named in the text are as follows: Des Moines, *Laws of Iowa*, 1852-1853, p. 49; Council Bluffs, *Laws of Iowa*, 1852-1853, p. 108; Iowa

City, *Laws of Iowa*, 1852-1853, p. 99; Mount Pleasant, *Laws of Iowa*, 1854-1855, p. 136; Bloomfield, *Laws of Iowa*, 1854-1855, p. 9; Le Claire, *Laws of Iowa*, 1854-1855, p. 20; Knoxville, *Laws of Iowa*, 1854-1855, p. 97; Oskaloosa, *Laws of Iowa*, 1854-1855, p. 123; Lyons, *Laws of Iowa*, 1854-1855, p. 142; Mount Pleasant, *Laws of Iowa*, (Extra Session), 1856, p. 18; Wapello, *Laws of Iowa* (Extra Session), 1856, p. 52; Ottumwa, *Laws of Iowa* (Extra Session), 1856, p. 63.

³⁴ References to acts of the legislature granting special charters to municipalities named in the text are as follows: Glenwood, *Laws of Iowa*, 1856-1857, p. 33; Winterset, *Laws of Iowa*, 1856-1857, p. 41; Sioux City, *Laws of Iowa*, 1856-1857, p. 51; Centerville, *Laws of Iowa*, 1856-1857, p. 107; Clinton, *Laws of Iowa*, 1856-1857, p. 132; Newton, *Laws of Iowa*, 1856-1857, p. 143; Tipton, *Laws of Iowa*, 1856-1857, p. 159; Maquoketa, *Laws of Iowa*, 1856-1857, p. 176; Albia, *Laws of Iowa*, 1856-1857, p. 208; Washington, *Laws of Iowa*, 1856-1857, p. 219; Eddyville, *Laws of Iowa*, 1856-1857, p. 245; Des Moines, *Laws of Iowa*, 1856-1857, p. 281; Burris City, *Laws of Iowa*, 1856-1857, p. 313; Charles City, *Laws of Iowa*, 1856-1857, p. 325; Camanche, *Laws of Iowa*, 1856-1857, p. 359; Princeton, *Laws of Iowa*, 1856-1857, p. 416.

³⁵ *Laws of Iowa*, 1858, p. 343. It should be noted, however, that this was not the first general incorporation act in the history of Iowa. In 1836 the Legislative Assembly of the original Territory of Wisconsin passed such an act, which remained in force until 1840. Again in 1847 the General Assembly of Iowa passed a general incorporation act; but it is apparent that the larger cities did not take advantage of its provisions—special charters being preferred.

³⁶ See Appendix I.

³⁷ Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 181.

³⁸ *Council Journal*, 1840-1841, p. 131.

³⁹ *Council Journal*, 1838-1839, pp. 55, 168, 173, 195, 1839-1840, p. 128, 1840-1841, pp. 172, 174.

⁴⁰ *Senate Journal*, 1856, p. 253; *House Journal*, 1856, p. 350; *Council Journal*, 1839, p. 150. The cities affected by these vetoes were Dubuque, Winterset, and Centerville.

⁴¹ The city records show that the charters granted to Sioux City and Washington did not become operative and it is doubtful if the charters passed by the legislature for the towns of Bloomfield and Salem ever went into effect.

⁴² *Laws of the Territory of Iowa*, 1840-1841, p. 97, 1843-1844, p. 156.

⁴³ Patton's *Home Rule in Iowa* in the *Iowa Applied History Series*, Vol. II, p. 107.

⁴⁴ *Constitution of Iowa*, 1857, Art. III, Sec. 30.

⁴⁵ *Constitution of Iowa*, 1857, Art. I, Sec. 6.

⁴⁶ *Revised Statutes of Ohio*, 1860, Vol. II, p. 1491.

⁴⁷ *Laws of Iowa*, 1858, p. 343; Patton's *Home Rule in Iowa* in the *Iowa Applied History Series*, Vol. II, pp. 105-109.

⁴⁸ *Laws of Iowa* (Extra Session), 1862, Ch. 25.

⁴⁹ *Compiled Code*, 1919, secs. 3500-3506.

⁵⁰ *Compiled Code*, 1919, secs. 4472-4474.

⁵¹ Clark, Dodge & Co. *vs.* The City of Davenport, 14 Iowa 494; Burke *vs.* Jeffries et al, 20 Iowa 147 reversing Whiting and Whiting *vs.* The City of Mount Pleasant, 11 Iowa 484.

⁵² Burke *vs.* Jeffries, 20 Iowa 145; The City of Burlington *vs.* Leebrick, 43 Iowa 252; The City of Keokuk *vs.* Dressell, 47 Iowa 597; Bartemeyer *vs.* Rohlf, 71 Iowa 582.

⁵³ *Laws of Iowa*, 1876, Ch. 116, sec. 21.

⁵⁴ *Ex Parte* Samuel Pritz, 9 Iowa 30.

⁵⁵ Davis & Bro. *vs.* Woolnough, 9 Iowa 104.

⁵⁶ *Laws of Iowa*, 1917, pp. 161, 162. For a full discussion of special legislation in Iowa, see Horack's *Special Municipal Legislation in Iowa* in *The American Political Science Review*, Vol. XIV, No. 3, p. 423.

⁵⁷ Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 94.

⁵⁸ Patton's *Home Rule in Iowa* in the *Iowa Applied History Series*, Vol. II, p. 117.

⁵⁹ Dillon's *Municipal Corporations* (5th edition), Vol. I, pp. 58, 59.

⁶⁰ Patton's *Home Rule in Iowa* in the *Iowa Applied History Series*, Vol. II, pp. 117, 118.

⁶¹ *Laws of Iowa*, 1854-1855, p. 129, 1856-1857, pp. 148, 165.

⁶² *Laws of Iowa* (Extra Session), 1856, p. 51.

CHAPTER III

⁶³ *Code of 1897*, sec. 936.

⁶⁴ *Code of 1897*, sec. 934.

- ⁶⁵ *Code of 1897*, sec. 933. See annotations.
- ⁶⁶ *Revised Ordinances of Davenport*, 1911, p. 106.
- ⁶⁷ *Revised Ordinances of Muscatine*, 1918, p. 81.
- ⁶⁸ *Laws of Iowa*, 1850-1851, p. 113.
- ⁶⁹ *Code of 1897*, secs. 936, 1062.
- ⁷⁰ *Laws of Iowa*, 1850-1851, pp. 65, 66, (Extra Session), 1856, pp. 53, 55, 56.
- ⁷¹ *Revised Ordinances of Davenport*, 1911, p. 106.
- ⁷² *Revised Ordinances of Muscatine*, 1918, p. 82.
- ⁷³ *Revised Ordinances of Davenport*, 1911, p. 107.
- ⁷⁴ *Revised Ordinances of Muscatine*, 1918, p. 83.
- ⁷⁵ *Laws of Iowa*, 1850-1851, p. 116, 1856-1857, p. 129.
- ⁷⁶ *Laws of Iowa*, 1850-1851, p. 114.
- ⁷⁷ *Laws of Iowa*, 1850-1851, p. 60.
- ⁷⁸ *Laws of Iowa*, 1856-1857, p. 360.
- ⁷⁹ *Laws of Iowa*, 1846-1847, p. 91, 1852-1853, p. 139, 1856-1857, pp. 148, 165, 398.
- ⁸⁰ *Laws of the Territory of Iowa*, 1841-1842, pp. 16, 110.
- ⁸¹ *Laws of Iowa*, 1846-1847, pp. 88, 149, (Extra Session), 1848, p. 26, 1850-1851, p. 108.
- ⁸² *Laws of Iowa*, 1850-1851, pp. 65, 67, 68.
- ⁸³ *Laws of Iowa*, 1850-1851, pp. 116, 124, 125.
- ⁸⁴ *Laws of Iowa* (Extra Session), 1856, p. 59.
- ⁸⁵ *Laws of Iowa*, 1856-1857, pp. 39, 41.
- ⁸⁶ *Laws of Iowa*, 1856-1857, p. 368.
- ⁸⁷ *Constitution of Iowa*, 1857, Art. XI, Sec. 3.
- ⁸⁸ See chapter on taxation in this article.

CHAPTER IV

- ⁸⁹ *Laws of Iowa*, 1850-1851, pp. 60, 64.
- ⁹⁰ *Laws of Iowa*, 1850-1851, pp. 113, 116.
- ⁹¹ *Laws of Iowa* (Extra Session), 1856, pp. 53, 54, 57.

- ⁹² *Laws of Iowa*, 1856-1857, pp. 34, 37.
- ⁹³ *Laws of Iowa*, 1856-1857, pp. 360, 361, 365.
- ⁹⁴ *Laws of Iowa*, 1888, Ch. 27.
- ⁹⁵ *Laws of Iowa*, 1884, p. 157.
- ⁹⁶ *Compiled Code*, 1919, sec. 4408.
- ⁹⁷ *Revised Ordinances of Muscatine*, 1918, p. 81.
- ⁹⁸ *Revised Ordinances of Davenport*, 1911, p. 106.
- ⁹⁹ *Laws of Iowa*, 1854-1855, pp. 9, 125, (Extra Session), 1856, pp. 20, 32, 1856-1857, pp. 100, 355.
- ¹⁰⁰ *Laws of Iowa*, 1850-1851, pp. 60, 111, 1856-1857, p. 361.
- ¹⁰¹ *Laws of Iowa* (Extra Session), 1856, pp. 53, 54, 1856-1857, p. 34.
- ¹⁰² *Code of 1897*, secs. 936, 937; *Revised Ordinances of Davenport*, 1911, p. 107; *Revised Ordinances of Muscatine*, 1918, p. 252.
- ¹⁰³ *Laws of Iowa*, 1850-1851, pp. 66, 118, 126.
- ¹⁰⁴ *Laws of Iowa*, 1856-1857, p. 99.
- ¹⁰⁵ *Laws of Iowa* (Extra Session), 1856, pp. 55-57, 1856-1857, pp. 36, 37.
- ¹⁰⁶ *Laws of Iowa*, 1856-1857, p. 369.
- ¹⁰⁷ *Code of 1897*, sec. 943, *Laws of Iowa*, 1919, Ch. 177.
- ¹⁰⁸ *Code of 1897*, sec. 945, *Laws of Iowa*, 1919, Ch. 178.
- ¹⁰⁹ *Laws of Iowa*, 1878, Ch. 56.
- ¹¹⁰ *Revised Ordinances of Muscatine*, 1918, pp. 206, 207.
- ¹¹¹ *Revised Ordinances of Davenport*, 1911, pp. 281, 282.
- ¹¹² *Laws of Iowa*, 1850-1851, p. 60.
- ¹¹³ *Laws of Iowa*, 1850-1851, pp. 111-113.
- ¹¹⁴ *Laws of Iowa* (Extra Session), 1856, p. 53, 1856-1857, p. 34.
- ¹¹⁵ *Laws of Iowa*, 1856-1857, p. 360.
- ¹¹⁶ *Laws of Iowa*, 1846-1847, p. 97.
- ¹¹⁷ *Laws of Iowa*, 1850-1851, p. 65.
- ¹¹⁸ *Laws of Iowa*, 1850-1851, pp. 112, 113, 114.
- ¹¹⁹ *Laws of Iowa* (Extra Session), 1856, pp. 55, 57.

¹²⁰ *Laws of Iowa*, 1856-1857, pp. 35, 37.

¹²¹ *Laws of Iowa*, 1856-1857, p. 369.

¹²² *Laws of Iowa*, 1913, Ch. 94.

¹²³ *Laws of Iowa*, 1913, Ch. 94, 1915, Ch. 2; *Supplement to the Code of Iowa*, 1913, sec. 937; *Compiled Code*, 1919, secs. 4303, 4304.

¹²⁴ In one charter the bond was approved by the mayor.—*Laws of Iowa*, 1846-1847, p. 99. The bond of the clerk of the court was fixed in one charter at \$5000.00.—*Laws of Iowa*, 1856-1857, p. 355.

¹²⁵ *Laws of Iowa*, 1850-1851, p. 66, 1856-1857, p. 369.

¹²⁶ *Laws of Iowa*, 1850-1851, p. 116.

¹²⁷ *Laws of Iowa* (Extra Session), 1856, p. 54.

¹²⁸ *Laws of Iowa*, 1856-1857, p. 36.

¹²⁹ References to the charters mentioned in the text are as follows: Muscatine, *Laws of Iowa*, 1850-1851, p. 66; Wapello, *Laws of Iowa* (Extra Session), 1856, p. 56; Glenwood, *Laws of Iowa*, 1856-1857, p. 37; Camanche, *Laws of Iowa*, 1856-1857, p. 369; Davenport, *Laws of Iowa*, 1850-1851, p. 116.

¹³⁰ *Laws of Iowa*, 1850-1851, pp. 64, 116, (Extra Session), 1856, p. 57, 1856-1857, p. 37.

¹³¹ *Laws of Iowa*, 1856-1857, p. 368.

¹³² *Laws of Iowa*, 1880, p. 21.

¹³³ *Laws of Iowa*, 1888, p. 30.

¹³⁴ *Laws of Iowa*, 1882, p. 155.

¹³⁵ *Laws of Iowa*, 1892, p. 18.

¹³⁶ *Code of 1897*, sec. 998.

¹³⁷ *Laws of Iowa*, 1907, p. 36.

¹³⁸ *Laws of Iowa*, 1907, Ch. 27.

¹³⁹ *Laws of Iowa*, 1911, p. 35.

¹⁴⁰ *Laws of Iowa*, 1913, p. 80.

¹⁴¹ The only exception was found in the Farmington charter of 1847.—*Laws of Iowa*, 1846-1847, p. 97.

¹⁴² *Laws of Iowa*, 1850-1851, p. 116.

¹⁴³ *Laws of Iowa*, 1856-1857, p. 368.

¹⁴⁴ *Code of 1897*, sec. 940.

¹⁴⁵ *Compiled Code, 1919*, sec. 4375.

¹⁴⁶ *Laws of Iowa, 1850-1851*, p. 66.

¹⁴⁷ *Laws of Iowa, 1850-1851*, p. 118.

¹⁴⁸ *Laws of Iowa* (Extra Session), 1856, pp. 54, 55, 56, 57, 1856-1857, pp. 37, 368.

¹⁴⁹ *Code of 1897*, sec. 946; *Compiled Code, 1919*, secs. 4337, 3750.

¹⁵⁰ References to the special charters granted to municipalities named in the text are as follows: Muscatine, *Laws of Iowa, 1850-1851*, p. 64; Wapello, *Laws of Iowa* (Extra Session), 1856, p. 57; Glenwood, *Laws of Iowa, 1856-1857*, p. 37; Camanche, *Laws of Iowa, 1856-1857*, p. 368; Davenport, *Laws of Iowa, 1850-1851*, p. 110.

¹⁵¹ *Compiled Code, 1919*, sec. 4375.

¹⁵² *Compiled Code, 1919*, sec. 4337.

¹⁵³ *Compiled Code, 1919*, secs. 4329 (3750).

¹⁵⁴ *Laws of Iowa, 1850-1851*, p. 66.

¹⁵⁵ *Laws of Iowa, 1850-1851*, p. 116.

¹⁵⁶ *Laws of Iowa, 1907*, Ch. 47.

¹⁵⁷ *Laws of Iowa, 1850-1851*, p. 116.

¹⁵⁸ *Laws of Iowa* (Extra Session), 1856, p. 56.

¹⁵⁹ *Laws of Iowa, 1856-1857*, p. 37.

¹⁶⁰ *Laws of Iowa, 1856-1857*, p. 369.

¹⁶¹ *Laws of Iowa, 1850-1851*, p. 118.

¹⁶² *Compiled Code, 1919*, secs. 4370 (3805).

¹⁶³ *Laws of Iowa, 1892*, p. 18; *Compiled Code, 1919*, sec. 4416.

CHAPTER V

¹⁶⁴ *Laws of Iowa, 1888*, Ch. 23.

¹⁶⁵ *Laws of Iowa, 1907*, Ch. 29.

¹⁶⁶ *Laws of Iowa, 1907*, Ch. 27.

¹⁶⁷ *Compiled Code, 1919*, sec. 4303.

¹⁶⁸ *Compiled Code, 1919*, secs. 4375, 4416, 4337, 4445.

- ¹⁶⁹ *Laws of Iowa*, 1850-1851, p. 61.
- ¹⁷⁰ *Laws of Iowa*, 1850-1851, pp. 123-126.
- ¹⁷¹ *Laws of Iowa*, 1856-1857, p. 94.
- ¹⁷² *Compiled Code*, 1919, secs. 4337, 4379, 4475, 4380 (3886).
- ¹⁷³ *Compiled Code*, 1919, secs. 4324, 4446.
- ¹⁷⁴ *Compiled Code*, 1919, secs. 4358, 4426, 4428, 4433, 4437, 4438, 4439.
- ¹⁷⁵ *Laws of Iowa*, 1856-1857, pp. 154, 162, 182, 211, 221, 247, 294.
- ¹⁷⁶ *Revised Ordinances of Muscatine*, 1918, p. 52.
- ¹⁷⁷ *Laws of Iowa*, 1880, Ch. 24.
- ¹⁷⁸ *Laws of Iowa*, 1888, Ch. 22.
- ¹⁷⁹ *Revised Ordinances of Davenport*, 1911, pp. 342-359.
- ¹⁸⁰ *Laws of Iowa*, 1888, Ch. 22.
- ¹⁸¹ *Compiled Code*, 1919, secs. 4388, 4398. See also *Code of 1897*, sec. 973.
- ¹⁸² *Compiled Code*, 1919, secs. 4392, 4393, 4434, 4435, 4441, 4443 (4070-4080).
- ¹⁸³ *Compiled Code*, 1919, sec. 4376.
- ¹⁸⁴ *Compiled Code*, 1919, secs. 4310 (3530-3533).
- ¹⁸⁵ *Revised Ordinances of Davenport*, 1911, pp. 342-359.
- ¹⁸⁶ *Compiled Code*, 1919, secs. 4445-4466.
- ¹⁸⁷ *Compiled Code*, 1919, sec. 4416.
- ¹⁸⁸ *Compiled Code*, 1919, sec. 4477.
- ¹⁸⁹ *Revised Ordinances of Muscatine*, 1918, pp. 97-100.
- ¹⁹⁰ *Revised Ordinances of Davenport*, 1911, pp. 308-315.
- ¹⁹¹ *Laws of Iowa*, 1921, Ch. 160.
- ¹⁹² *Laws of Iowa*, 1907, Ch. 47.
- ¹⁹³ *Laws of Iowa*, 1911, Ch. 49.
- ¹⁹⁴ *Revised Ordinances of Muscatine*, 1918, pp. 320-333.

CHAPTER VI

¹⁹⁵ The Des Moines charter of 1857 provided for fourteen aldermen—the largest number in any special charter city.—*Laws of Iowa*, 1856-1857, p. 283.

¹⁹⁶ *Laws of the Territory of Wisconsin*, 1836-1838, pp. 481, 482.

¹⁹⁷ *Laws of Iowa*, 1848-1849, p. 116, 1850-1851, p. 102, 1856-1857, p. 153.

¹⁹⁸ Muscatine, Davenport, Wapello, and Camanche are the four cities authorizing two aldermen from each ward, while Glenwood had three.

¹⁹⁹ According to the *Federal Census*, 1920, the population of the special charter cities was as follows:

Davenport	- - - - -	56,727
Muscatine	- - - - -	16,068
Glenwood	- - - - -	3862
Wapello	- - - - -	1480
Camanche	- - - - -	610

²⁰⁰ *Code of 1897*, sec. 937.

²⁰¹ State ex rel. *Jebens vs Noth*, 151 N. W. 822.

²⁰² *Laws of Iowa*, 1850-1851, pp. 60, 111, 112, 1856-1857, p. 361.

²⁰³ *Laws of Iowa* (Extra Session), 1856, p. 54, 1856-1857, p. 34.

²⁰⁴ *Code of 1897*, secs. 936, 937.

²⁰⁵ *Laws of Iowa*, 1850-1851, p. 60.

²⁰⁶ *Laws of Iowa*, 1850-1851, p. 65.

²⁰⁷ *Laws of Iowa*, 1850-1851, p. 111.

²⁰⁸ *Laws of Iowa* (Extra Session), 1856, pp. 53, 56, 1856-1857, pp. 34, 36, 360.

²⁰⁹ *Code of 1897*, sec. 943.

²¹⁰ *Laws of Iowa*, 1850-1851, p. 66, 1856-1857, p. 369.

²¹¹ *Laws of Iowa*, 1850-1851, pp. 120, 126.

²¹² *Laws of Iowa*, 1856-1857, p. 99.

²¹³ *Laws of Iowa*, 1890, pp. 27, 28.

²¹⁴ *Code of 1897*, sec. 945.

²¹⁵ *Laws of Iowa*, 1919, Ch. 178.

²¹⁶ *Code of 1897*, sec. 943; *Laws of Iowa*, 1919, Ch. 177.

²¹⁷ *Laws of Iowa*, 1850-1851, pp. 66, 112, (Extra Session), 1856, p. 56, 1856-1857, pp. 37, 369. The punctuation, however, is not the same in all the charters referred to.

²¹⁸ *Laws of Iowa*, 1846-1847, p. 177, 1856-1857, p. 358.

²¹⁹ *Laws of Iowa*, 1856-1857, p. 358. The charter referred to in the text was the one given to Dubuque.

²²⁰ *Laws of Iowa*, 1850-1851, p. 66.

²²¹ *Revised Ordinances of Muscatine*, 1918, p. 84.

²²² *Laws of Iowa*, 1850-1851, p. 62, 1856-1857, pp. 362, 363.

²²³ *Laws of Iowa*, 1850-1851, pp. 112, 119.

²²⁴ *Laws of Iowa* (Extra Session), 1856, pp. 53, 54, 55, 57, 1856-1857, pp. 34, 35, 37.

CHAPTER VII

²²⁵ Dillon's *Municipal Corporations* (5th edition), Vol. II, p. 892.

²²⁶ *Laws of Iowa*, 1850-1851, p. 62, 1856-1857, p. 363.

²²⁷ *Laws of Iowa*, 1850-1851, p. 118.

²²⁸ *Laws of Iowa* (Extra Session), 1856, p. 57, 1856-1857, p. 37.

²²⁹ *Code of 1897*, sec. 947; *Compiled Code, 1919*, sec. 4317.

²³⁰ *Laws of Iowa*, 1850-1851, p. 118.

²³¹ *Code of 1897*, secs. 952 (685); *Compiled Code, 1919*, secs. 4322 (3579).

²³² *Laws of Iowa*, 1850-1851, p. 65.

²³³ *Laws of Iowa* (Extra Session), 1856, p. 56, 1856-1857, p. 36.

²³⁴ *Laws of Iowa*, 1850-1851, pp. 118, 119.

²³⁵ *Code of 1897*, secs. 952 (686); *Compiled Code, 1919*, secs. 4322 (3580).

²³⁶ *Code of Iowa, 1897*, sec. 951; *Compiled Code, 1919*, sec. 4321.

²³⁷ *The City of Burlington vs. Kellar*, 18 Iowa 59 at 60.

²³⁸ *Laws of Iowa*, 1850-1851, pp. 62, 63, 1856-1857, p. 363.

²³⁹ *Laws of Iowa*, 1850-1851, pp. 118, 123.

²⁴⁰ *Laws of Iowa* (Extra Session), 1856, pp. 57, 58.

²⁴¹ *Laws of Iowa*, 1856-1857, pp. 37, 39.

²⁴² *Code of Iowa, 1897*, secs. 947-949; *Compiled Code, 1919*, secs. 4317-4319. For further information on statute of limitations and the recovery of fines, see *Compiled Code, 1919*, secs. 4320, 4322 (3589).

²⁴³ *Laws of Iowa*, 1850-1851, p. 119.

²⁴⁴ *Code of 1897*, secs. 952 (687); *Compiled Code, 1919*, secs. 4322 (3581).

²⁴⁵ *Laws of Iowa, 1886*, Ch. 93; *Compiled Code, 1919*, sec. 4324.

CHAPTER VIII

²⁴⁶ *Laws of Iowa, 1856-1857*, p. 363, 1850-1851, p. 63.

²⁴⁷ *Laws of Iowa, 1850-1851*, p. 117.

²⁴⁸ *Laws of Iowa (Extra Session), 1856*, p. 58.

²⁴⁹ *Code of 1897*, secs. 952 (718).

²⁵⁰ *The City of Keokuk vs. Keokuk and Packet Co.*, 45 Iowa 196.

²⁵¹ *McManus vs. Carmichael*, 3 Iowa 1 at 2; *Haight vs. The City of Keokuk*, 4 Iowa 199; *Carr vs. Moore*, 119 Iowa 152.

²⁵² *Laws of Iowa, 1919*, Ch. 285.

²⁵³ *Laws of Iowa, 1909*, Ch. 60.

²⁵⁴ *Laws of Iowa, 1911*, Ch. 49.

²⁵⁵ *Laws of Iowa, 1913*, Ch. 95; see also *Compiled Code, 1919*, secs. 4372-4377.

²⁵⁶ *Laws of the Territory of Iowa, 1841-1842*, p. 77.

²⁵⁷ *Laws of Iowa, 1917*, Ch. 53, sec. 1.

²⁵⁸ *Laws of Iowa, 1917*, Ch. 53, sec. 1; *Code of 1897*, sec. 719.

²⁵⁹ *Laws of Iowa, 1850-1851*, p. 117.

²⁶⁰ *Code of 1897*, sec. 958; *Supplement to the Code of Iowa, 1913*, sec. 958; *Compiled Code, 1919*, sec. 4331.

²⁶¹ *Laws of Iowa, 1917*, Ch. 140.

²⁶² *Senate Journal, 1917*, pp. 263, 555. This bill was passed without a dissenting vote.

²⁶³ *Laws of Iowa (Extra Session), 1856*, p. 58.

²⁶⁴ *Code of 1897*, sec. 952; *Supplement to the Code of Iowa, 1913*, sec. 952; *Compiled Code, 1919*, secs. 4323 (3597), 4323 (3598).

²⁶⁵ *Laws of Iowa, 1904*, Ch. 68, sec. 39.

²⁶⁶ *Code of 1897*, secs. 960, 961, 963; *Compiled Code, 1919*, secs. 4362, 4363, 4366.

²⁶⁷ *Laws of Iowa, 1913*, Ch. 168, sec. 1.

- ²⁶⁸ *Laws of Iowa*, 1850-1851, p. 166.
- ²⁶⁹ *Laws of Iowa* (Extra Session), 1856, pp. 75, 76.
- ²⁷⁰ *Laws of Iowa*, 1913, Ch. 21, sec. 1.
- ²⁷¹ *Laws of Iowa*, 1900, Ch. 24, sec. 2; *Compiled Code*, 1919, secs. 4336 (3981, 3985).
- ²⁷² *Cedar Rapids Water Co. vs. Cedar Rapids*, 118 Iowa 234.
- ²⁷³ *Code of 1897*, secs. 958 (736); *Compiled Code*, 1919, secs. 4358 (3645).
- ²⁷⁴ *The Iowa Journal of History and Politics*, Vol. XVIII, pp. 214, 215.
- ²⁷⁵ *Laws of Iowa*, 1892, Ch. 4; *Code of 1897*, secs. 998, 999; *Compiled Code*, 1919, secs. 4416, 4417.
- ²⁷⁶ *Compiled Code*, 1919, sec. 4329; *Code of 1897*, secs. 952 (727-732).
- ²⁷⁷ *Laws of Iowa*, 1902, Chs. 34, 35.
- ²⁷⁸ See *Compiled Code*, 1919, secs. 4329 (3749-3759).
- ²⁷⁹ *Laws of Iowa*, 1907, Ch. 34.
- ²⁸⁰ *Laws of Iowa*, 1913, Ch. 72.
- ²⁸¹ *Compiled Code*, 1919, secs. 4328 (3740-3744).
- ²⁸² References to data as it appears in the text are as follows : markets, *Compiled Code*, 1919, secs. 4323 (3635); workhouses, *Compiled Code*, 1919, secs. 4358 (3642); jails, *Compiled Code*, 1919, secs. 4358 (3643); bath-houses, *Compiled Code*, 1919, sec. 4344; play grounds, *Compiled Code*, 1919, secs. 2681, 4327 (3734-3739); school farm or school garden, *Compiled Code*, 1919, sec. 2688.
- ²⁸³ *Compiled Code*, 1919, sec. 4479.
- ²⁸⁴ *Code of 1897*, secs. 952 (727-732); *Compiled Code*, 1919, secs. 4329 (3749-3759).
- ²⁸⁵ *Laws of Iowa*, 1919, Ch. 170.
- ²⁸⁶ *Laws of Iowa*, 1884, Ch. 151.
- ²⁸⁷ *Compiled Code*, 1919, secs. 4409 (3666-3683).
- ²⁸⁸ *Laws of the Territory of Iowa*, 1845-1846, p. 121.
- ²⁸⁹ *Laws of Iowa*, 1850-1851, p. 64.
- ²⁹⁰ *Laws of Iowa*, 1850-1851, p. 116.
- ²⁹¹ *Laws of Iowa*, 1856-1857, p. 41.

²⁹² *Laws of Iowa*, 1856-1857, pp. 364-366.

²⁹³ *Laws of Iowa*, 1862, p. 221.

²⁹⁴ *Whiting and Whiting vs. The City of Mount Pleasant*, 11 Iowa 484.

²⁹⁵ *Laws of Iowa*, 1866, p. 2.

²⁹⁶ *Laws of Iowa*, 1913, p. 50.

²⁹⁷ *Laws of Iowa*, 1917, p. 202.

CHAPTER IX

²⁹⁸ *Laws of Iowa*, 1850-1851, pp. 63, 64.

²⁹⁹ *Laws of Iowa*, 1856-1857, pp. 24, 25.

³⁰⁰ *Laws of Iowa*, 1850-1851, p. 117.

³⁰¹ *Laws of Iowa* (Extra Session), 1856, pp. 57, 58, 1856-1857, pp. 38, 363, 364.

³⁰² *Supplement to the Code of Iowa, 1913*, secs. 952 (700).

³⁰³ *Code of 1897*, secs. 952 (700-708).

³⁰⁴ *Laws of Iowa*, 1907, Ch. 32.

³⁰⁵ *Laws of Iowa*, 1917, Ch. 425.

³⁰⁶ *Laws of Iowa*, 1850-1851, p. 63.

³⁰⁷ *Laws of Iowa*, 1850-1851, p. 117.

³⁰⁸ *Laws of Iowa* (Extra Session), 1856, p. 58.

³⁰⁹ *Laws of Iowa*, 1856-1857, p. 38.

³¹⁰ *Laws of Iowa*, 1856-1857, p. 364.

³¹¹ *Code of 1897*, sec. 1013; *Compiled Code, 1919*, secs. 4432 (914-1027).

³¹² *Compiled Code, 1919*, secs. 914-1027.

³¹³ *The Iowa Journal of History and Politics*, Vol. XVIII, p. 218.

³¹⁴ *Laws of Iowa*, 1850-1851, p. 117.

³¹⁵ *Laws of Iowa*, 1850-1851, p. 62.

³¹⁶ *Laws of Iowa* (Extra Session), 1856, p. 58.

³¹⁷ *Laws of Iowa*, 1856-1857, p. 38.

³¹⁸ *House Journal*, 1882, p. 146; *Laws of Iowa*, 1882, Ch. 168.

³¹⁹ *Laws of Iowa*, 1917, Ch. 73; *Compiled Code, 1919*, sec. 1273.

- ³²⁰ *Laws of Iowa*, 1919, Ch. 123.
- ³²¹ *Code of 1897*, sec. 957.
- ³²² *Laws of Iowa*, 1917, Ch. 342, sec. 1.
- ³²³ *Laws of Iowa*, 1850-1851, p. 117.
- ³²⁴ *Laws of Iowa*, 1870, Ch. 80.
- ³²⁵ *Code of 1897*, sec. 999.
- ³²⁶ *Code of 1897*, secs. 952 (697).
- ³²⁷ *Revised Ordinances of Muscatine*, 1918, pp. 68-80.
- ³²⁸ *Laws of Iowa*, 1850-1851, p. 117.
- ³²⁹ Dillon's *Municipal Corporations* (5th edition), Vol. II, pp. 1044, 1045.
- ³³⁰ *Code of 1897*, secs. 952 (696); *Laws of Iowa*, 1913, Ch. 60, sec. 1; *Compiled Code, 1919*, secs. 4323 (3592).
- ³³¹ *Laws of Iowa*, 1913, Ch. 49, sec. 1; *Supplement to the Code of Iowa, 1913*, sec. 713-a.
- ³³² *Compiled Code, 1919*, secs. 4353 (3626).
- ³³³ *Code of 1897*, secs. 952 (695-719).
- ³³⁴ *Knoxville vs. Chicago, Burlington & Quincy Railroad Co.*, 83 Iowa 636.
- ³³⁵ *Cole vs. Kegler*, 64 Iowa 59; *Gosselink vs. Campbell*, 4 Iowa 296.
- ³³⁶ *State vs. Botkin*, 71 Iowa 87.
- ³³⁷ *The City of Chariton vs. Barber*, 54 Iowa 360.
- ³³⁸ *Code of 1897*, sec. 1052; *Compiled Code, 1919*, sec. 4477.
- ³³⁹ *Code of 1897*, secs. 952 (710); *Compiled Code, 1919*, secs. 4323 (3620).
- ³⁴⁰ *Laws of Iowa*, 1913, Ch. 63, sec. 1; *Compiled Code, 1919*, secs. 4349 (3614).
- ³⁴¹ *Laws of Iowa*, 1919, Ch. 145; *Compiled Code, 1919*, secs. 4350 (3615, 3616).
- ³⁴² *Laws of Iowa*, 1919, Ch. 123.
- ³⁴³ *Laws of Iowa*, 1921, Ch. 160.
- ³⁴⁴ *Laws of Iowa*, 1850-1851, pp. 116, 118.

³⁴⁵ *Laws of Iowa*, 1850-1851, p. 64.

³⁴⁶ *Revised Ordinances of Muscatine*, 1918, pp. 107, 133, 139, 143.

³⁴⁷ *Laws of Iowa*, 1888, Ch. 16, sec. 1.

³⁴⁸ *Code of 1897*, sec. 1052; *Compiled Code*, 1919, sec. 4477.

³⁴⁹ *Code of 1897*, secs. 958 (737); *Compiled Code*, 1919, secs. 4357 (3646-3655).

³⁵⁰ See above, section on *Power over Buildings*.

³⁵¹ *Code of 1897*, secs. 952 (713).

³⁵² *Supplemental Supplement to the Code of Iowa*, 1915, sec. 711-a; *Compiled Code*, 1919, secs. 4323 (3622), 4361.

³⁵³ *Laws of Iowa*, 1915, p. 258.

³⁵⁴ *Laws of Iowa*, 1850-1851, p. 63, 1856-1857, p. 363.

³⁵⁵ *Laws of Iowa*, 1850-1851, pp. 117, 118.

³⁵⁶ *Laws of Iowa* (Extra Session), 1856, p. 57, 1856-1857, p. 38.

³⁵⁷ *Code of 1897*, secs. 952 (715); *Compiled Code*, 1919, secs. 4323 (3628).

³⁵⁸ *Code of 1897*, secs. 952 (712); *Compiled Code*, 1919, secs. 4323 (3623).

³⁵⁹ *Code of 1897*, secs. 952 (714); *Compiled Code*, 1919, secs. 4323 (3627).

³⁶⁰ *Code of 1897*, secs. 952 (711); *Supplement to the Code of Iowa*, 1913, sec. 711-a.

³⁶¹ *Supplement to the Code of Iowa*, 1913, secs. 932-a — 932-i; *Compiled Code*, 1919, secs. 4467 (4089-4096).

³⁶² *Laws of Iowa*, 1850-1851, p. 69.

³⁶³ *Laws of Iowa*, 1850-1851, pp. 117, 118.

³⁶⁴ *Laws of Iowa* (Extra Session), 1856, pp. 57, 58.

³⁶⁵ *Laws of Iowa*, 1856-1857, p. 38.

³⁶⁶ *Laws of Iowa*, 1856-1857, p. 364.

³⁶⁷ *Code of 1897*, secs. 952 (707); *Compiled Code*, 1919, secs. 4323 (3611).

³⁶⁸ *Code of 1897*, secs. 952 (706); *Compiled Code*, 1919, secs. 4323 (3610).

³⁶⁹ Gosselink vs. Campbell, 4 Iowa 296.

³⁷⁰ Sibley vs. Lastrico, 122 Iowa 211.

³⁷¹ *Code of 1897*, secs. 958 (741); *Compiled Code, 1919*, secs. 4358 (3656).

³⁷² *Code of 1897*, secs. 958 (754); *Compiled Code, 1919*, secs. 4358 (3813).

³⁷³ *Supplemental Supplement to the Code of Iowa, 1915*, sec. 754-a; *Compiled Code, 1919*, secs. 4358 (3814).

³⁷⁴ *Code of 1897*, secs. 958 (755); *Compiled Code, 1919*, secs. 4358 (3815).

³⁷⁵ *Code of 1897*, secs. 958 (769, 770); *Laws of Iowa, 1919*, Ch. 106; *Compiled Code, 1919*, secs. 4358 (3817, 3818).

CHAPTER X

³⁷⁶ McQuillin's *Municipal Corporations*, Vol. V, pp. 4572-4574.

³⁷⁷ McQuillin's *Municipal Corporations*, Vol. V, p. 4575.

³⁷⁸ *Laws of Iowa, 1850-1851*, pp. 64, 65.

³⁷⁹ *Laws of Iowa, 1850-1851*, pp. 116, 117.

³⁸⁰ *Laws of Iowa, 1856-1857*, pp. 71, 72.

³⁸¹ *Laws of Iowa, 1856-1857*, pp. 41, 368, 369.

³⁸² *Laws of Iowa, 1850-1851*, p. 166, 1856-1857, pp. 270, 399, 400, 402, 403, 447.

³⁸³ *Laws of Iowa, 1854-1855*, p. 85.

³⁸⁴ *Code of 1897*, secs. 952 (726).

³⁸⁵ *Code of 1897*, sec. 987, also secs. 842-849, 1021 (905-913).

³⁸⁶ *Compiled Code, 1919*, sec. 4354.

³⁸⁷ *Compiled Code, 1919*, secs. 4323 (3593).

³⁸⁸ *Compiled Code, 1919*, secs. 4373, 4374.

³⁸⁹ *Compiled Code, 1919*, secs. 4441 (4060-4069), 4442.

³⁹⁰ *Compiled Code, 1919*, secs. 4403-4406 (3955, 3958, 3959, 3961, 3964, 3965).

³⁹¹ *Constitution of Iowa, 1857*, Art. XI, Sec. 3.

³⁹² French vs. The City of Burlington, 42 Iowa 614; *Laws of Iowa, 1923*, Ch. 132.

- ³⁹³ *Scott vs. The City of Davenport*, 34 Iowa 208.
- ³⁹⁴ *Grant vs. The City of Davenport*, 36 Iowa 396; *French vs. The City of Burlington*, 42 Iowa 614; *The City of Cedar Rapids vs. Bechtel*, 110 Iowa 196.
- ³⁹⁵ *Hall vs. The City of Cedar Rapids*, 115 Iowa 199.
- ³⁹⁶ *Grant vs. The City of Davenport*, 36 Iowa 396.
- ³⁹⁷ Dillon's *Municipal Corporations* (5th edition), Vol. I, p. 417.
- ³⁹⁸ *Davenport Gas Light and Coke Company vs. The City of Davenport*, 13 Iowa 229.
- ³⁹⁹ *Slusser Taylor & Co. vs. The City of Burlington*, 42 Iowa 378.
- ⁴⁰⁰ McClain's *New Iowa Digest*, Vol. III, pp. 2691, 2692.
- ⁴⁰¹ *Laws of Iowa*, 1850-1851, p. 64.
- ⁴⁰² *Laws of Iowa*, 1850-1851, pp. 116, 123.
- ⁴⁰³ *Laws of Iowa* (Extra Session), 1856, p. 58, 1856-1857, pp. 39, 368.
- ⁴⁰⁴ *Laws of Iowa*, 1888, Ch. 4, sec. 2.
- ⁴⁰⁵ *Compiled Code, 1919*, sec. 4312.
- ⁴⁰⁶ *Compiled Code, 1919*, secs. 4359 (3657-3662).
- ⁴⁰⁷ *Compiled Code, 1919*, secs. 4359 (127, 135, 136).
- ⁴⁰⁸ *Compiled Code, 1919*, sec. 4426.
- ⁴⁰⁹ *Compiled Code, 1919*, sec. 4428.
- ⁴¹⁰ *Compiled Code, 1919*, secs. 4427 (4050).
- ⁴¹¹ *Compiled Code, 1919*, secs. 4427 (4053).
- ⁴¹² *Compiled Code, 1919*, secs. 4440 (4060-4066, 4069).
- ⁴¹³ *Compiled Code, 1919*, secs. 4441, 4442.
- ⁴¹⁴ *Compiled Code, 1919*, secs. 4475, 4476.
- ⁴¹⁵ *Compiled Code, 1919*, sec. 4478.
- ⁴¹⁶ *Compiled Code, 1919*, secs. 4310 (3530-3533).
- ⁴¹⁷ *Compiled Code, 1919*, sec. 4423; *Laws of Iowa*, 1923, Ch. 142.

CHAPTER XI

- ⁴¹⁸ McQuillin's *Municipal Corporations*, Vol. V, p. 4944.
- ⁴¹⁹ *Morford vs. Unger*, 8 Iowa 82.

- ⁴²⁰ Clark, Dodge & Co., *vs.* The City of Davenport, 14 Iowa 494.
- ⁴²¹ *Laws of Iowa*, 1850–1851, p. 66, 1852–1853, p. 138.
- ⁴²² *Laws of Iowa*, 1850–1851, p. 114, (Extra Session), 1856, pp. 58, 59, 1856–1857, pp. 39, 366.
- ⁴²³ *Laws of Iowa*, 1854–1855, p. 85.
- ⁴²⁴ *Laws of Iowa*, 1856–1857, pp. 71, 72.
- ⁴²⁵ *Laws of Iowa*, 1850–1851, pp. 66, 67.
- ⁴²⁶ *Compiled Code*, 1919, sec. 4421; *Laws of Iowa*, 1923, Ch. 141.
- ⁴²⁷ *Compiled Code*, 1919, sec. 4423.
- ⁴²⁸ *Laws of Iowa*, 1900, Ch. 24.
- ⁴²⁹ *Compiled Code*, 1919, secs. 4392, 4393.
- ⁴³⁰ *Laws of Iowa*, 1909, Ch. 60.
- ⁴³¹ *Compiled Code*, 1919, secs. 4354 (3631–3634).
- ⁴³² *Compiled Code*, 1919, secs. 4427 (4048).
- ⁴³³ *Compiled Code*, 1919, secs. 4424 (4039).
- ⁴³⁴ *Compiled Code*, 1919, secs. 4323 (3593), 4422 (4032–4037).
- ⁴³⁵ *Laws of the Territory of Iowa*, 1839–1840, pp. 125, 126.
- ⁴³⁶ *Laws of Iowa*, 1850–1851, p. 66.
- ⁴³⁷ *Laws of Iowa*, 1852–1853, p. 138.
- ⁴³⁸ *Laws of Iowa*, 1856–1857, p. 149.
- ⁴³⁹ *Laws of Iowa*, 1850–1851, pp. 114, 115.
- ⁴⁴⁰ *Laws of Iowa* (Extra Session), 1856, p. 59.
- ⁴⁴¹ *Laws of Iowa*, 1856–1857, pp. 39, 366, 367.
- ⁴⁴² *Compiled Code*, 1919, secs. 4341, 4342.
- ⁴⁴³ *Compiled Code*, 1919, sec. 4433.
- ⁴⁴⁴ *Compiled Code*, 1919, sec. 4512.
- ⁴⁴⁵ *Laws of Iowa*, 1850–1851, pp. 66, 67.
- ⁴⁴⁶ *Laws of Iowa*, 1850–1851, pp. 115, 116.
- ⁴⁴⁷ *Laws of Iowa* (Extra Session), 1856, pp. 59, 60, 1856–1857, pp. 39, 40, 366–368.

⁴⁴⁸ *Laws of Iowa*, 1876, Ch. 116, sec. 1; *Compiled Code*, 1919, secs. 4429-4431.

⁴⁴⁹ *Compiled Code*, 1919, secs. 4431, 4432 (4677).

⁴⁵⁰ *Compiled Code*, 1919, sec. 4434.

⁴⁵¹ *Compiled Code*, 1919, sec. 4435.

⁴⁵² *Compiled Code*, 1919, secs. 4422 (4599-4604).

⁴⁵³ *Compiled Code*, 1919, sec. 4425.

⁴⁵⁴ *Compiled Code*, 1919, secs. 4396-4398.

CHAPTER XII

⁴⁵⁵ *Laws of Iowa*, 1856-1857, p. 355.

⁴⁵⁶ *Laws of Iowa*, 1850-1851, pp. 61, 120, 121, (Extra Session), 1856, pp. 54, 55, 1856-1857, pp. 35, 361, 362.

⁴⁵⁷ *Laws of Iowa*, 1856-1857, pp. 99, 100.

⁴⁵⁸ *Laws of Iowa*, 1870, p. 14, 1876, p. 135, 1882, p. 24, 1886, p. 2, 1915, p. 132.

⁴⁵⁹ *Laws of Iowa* (Extra Session), 1856, pp. 43, 44, 1856-1857, pp. 114, 355-357.

⁴⁶⁰ *Laws of Iowa*, 1870, p. 14, 1876, p. 135, 1915, p. 132.

⁴⁶¹ *Laws of Iowa*, 1850-1851, p. 61.

⁴⁶² *Laws of Iowa*, 1850-1851, pp. 120, 121.

⁴⁶³ *Laws of Iowa*, 1856-1857, pp. 99, 100.

⁴⁶⁴ *Laws of Iowa* (Extra Session), 1856, p. 54, 1856-1857, pp. 35, 361.

⁴⁶⁵ *Laws of Iowa* (Extra Session), 1856, p. 54, 1856-1857, p. 361.

⁴⁶⁶ *Laws of Iowa* (Extra Session), 1856, pp. 51, 52.

⁴⁶⁷ *Laws of Iowa*, 1870, pp. 14, 15; *Revision of 1860*, secs. 1117, 1118, 1119, 1120.

⁴⁶⁸ *Laws of Iowa*, 1876, pp. 135, 136. In 1882 the population requisite for such a court was raised to eight thousand and in 1886 it was reduced to seven thousand. — *Laws of Iowa*, 1882, p. 24, 1886, p. 2.

⁴⁶⁹ *Laws of Iowa*, 1915, p. 132, 1919, p. 165.

⁴⁷⁰ *Laws of Iowa*, 1850-1851, p. 61.

⁴⁷¹ *Laws of Iowa* (Extra Session), 1856, p. 54, 1856-1857, pp. 35, 362.

⁴⁷² *Laws of Iowa*, 1850-1851, p. 120.

⁴⁷³ *Code of 1897*, sec. 948; *Compiled Code, 1919*, sec. 4318.

⁴⁷⁴ *Laws of Iowa* (Extra Session), 1856, pp. 51, 52, 1856-1857, p. 109.

⁴⁷⁵ *Code of 1897*, secs. 949, 950.

⁴⁷⁶ *Laws of Iowa*, 1870, pp. 14, 15; *Revision of 1860*, sec. 1119.

⁴⁷⁷ *Laws of Iowa*, 1876, p. 136.

⁴⁷⁸ *Laws of Iowa*, 1915, pp. 132-145.

CHAPTER XIII

⁴⁷⁹ *Laws of Iowa*, 1850-1851, p. 64.

⁴⁸⁰ *Laws of Iowa*, 1850-1851, pp. 117, 121-123.

⁴⁸¹ *Laws of Iowa* (Extra Session), 1856, pp. 58, 60.

⁴⁸² *Laws of Iowa*, 1856-1857, pp. 39, 41, 364, 366, 368.

⁴⁸³ *Laws of Iowa*, 1852-1853, p. 138, 1854-1855, pp. 76, 77, 83, (Extra Session), 1856, p. 49, 1856-1857, pp. 24, 71, 92, 149.

⁴⁸⁴ *Laws of Iowa*, 1911, p. 40; *Compiled Code, 1919*, secs. 4444 (4074).

⁴⁸⁵ *Code of 1897*, secs. 958 (751); *Compiled Code, 1919*, secs. 4358 (3808).

⁴⁸⁶ *Compiled Code, 1919*, secs. 4358 (3808-3810), 4422 (4035-4037), 4395 (3923-3928).

⁴⁸⁷ *Compiled Code, 1919*, secs. 4358 (3826-3834).

⁴⁸⁸ *Compiled Code, 1919*, secs. 4358 (3813-3823).

⁴⁸⁹ *Compiled Code, 1919*, secs. 5240-5256.

⁴⁹⁰ *Compiled Code, 1919*, sec. 4368.

⁴⁹¹ *Compiled Code, 1919*, secs. 4383 (4024).

⁴⁹² *Compiled Code, 1919*, secs. 4386-4391, 4394 (3892, 3896-3899, 3904), 4396-4402, 4403-4407 (3955, 3958, 3959, 3961-3965), 4441, 4442.

⁴⁹³ *Laws of Iowa*, 1915, p. 114; *Supplemental Supplement to the Code of Iowa, 1915*, sec. 997-c; *Compiled Code, 1919*, sec. 4415.

⁴⁹⁴ *Laws of Iowa*, 1917, pp. 191, 192; *Compiled Code, 1919*, sec. 4411.

⁴⁹⁵ *Compiled Code, 1919*, sec. 4412.

⁴⁹⁶ *Laws of Iowa*, 1900, Ch. 26, 1904, Ch. 30.

- ⁴⁹⁷ *Laws of Iowa*, 1856-1857, p. 94.
- ⁴⁹⁸ *Laws of Iowa*, 1850-1851, p. 64.
- ⁴⁹⁹ *Laws of Iowa*, 1854-1855, pp. 76, 77.
- ⁵⁰⁰ *Laws of Iowa*, 1850-1851, pp. 117, 121, 122, 1856-1857, p. 93.
- ⁵⁰¹ *Laws of Iowa* (Extra Session), 1856, p. 60, 1856-1857, p. 40.
- ⁵⁰² *Laws of Iowa*, 1856-1857, p. 368.
- ⁵⁰³ *Compiled Code*, 1919, secs. 4364 (3849, 3856).
- ⁵⁰⁴ *Compiled Code*, 1919, secs. 4365 (3850-3853, 3855).
- ⁵⁰⁵ *Laws of Iowa*, 1913, Ch. 79; *Compiled Code*, 1919, secs. 4367 (3871), 4380 (3883).
- ⁵⁰⁶ *Laws of Iowa*, 1896, Ch. 9.
- ⁵⁰⁷ *Code of 1897*, sec. 967; *Compiled Code*, 1919, secs. 4381, 4382.
- ⁵⁰⁸ *Compiled Code*, 1919, sec. 4384.
- ⁵⁰⁹ *Compiled Code*, 1919, sec. 4392; *Laws of Iowa*, 1923, Chs. 126, 140.
- ⁵¹⁰ McQuillin's *Municipal Corporations*, Vol. III, p. 1980.
- ⁵¹¹ *Laws of Iowa*, 1848-1849, pp. 18, 26.
- ⁵¹² *Creal vs. City of Keokuk*, 4 G. Greene 47.
- ⁵¹³ *Wallace vs. City of Muscatine*, 4 G. Greene 373, 375.
- ⁵¹⁴ *Van Pelt vs. The City of Davenport*, 42 Iowa 308.
- ⁵¹⁵ *Waller vs. The City of Dubuque*, 69 Iowa 541, *Cotes & Patchin vs. The City of Davenport*, 9 Iowa 227, *Ross vs. The City of Clinton*, 46 Iowa 606.
- ⁵¹⁶ *Hoehl vs. The City of Muscatine*, 57 Iowa 444; *Fulleam vs. The City of Muscatine*, 57 Iowa 457.
- ⁵¹⁷ *Freiburg vs. The City of Davenport*, 63 Iowa 119.
- ⁵¹⁸ *Bauer vs. The City of Dubuque*, 122 Iowa 500.
- ⁵¹⁹ *Baxter vs. City of Cedar Rapids*, 103 Iowa 599.
- ⁵²⁰ *Crandall vs. City of Dubuque*, 112 N. W. 555.
- ⁵²¹ *Lamb vs. The City of Cedar Rapids*, 108 Iowa 629.
- ⁵²² *Fulliam vs. The City of Muscatine*, 70 Iowa 436.
- ⁵²³ *Stafford vs. The City of Oskaloosa*, 64 Iowa 251.
- ⁵²⁴ *Stanley vs. The City of Davenport*, 54 Iowa 463 at 468.

- 525 *Collins vs. The City of Council Bluffs*, 35 Iowa 432.
- 526 *Cramer vs. The City of Burlington*, 39 Iowa 512.
- 527 *Doulon vs. The City of Clinton*, 33 Iowa 397.
- 528 *Jones vs. The City of Clinton*, 100 Iowa 333.
- 529 *Wilberding vs. City of Dubuque*, 111 Iowa 484.
- 530 *Hanlon vs. The City of Keokuk*, 7 Iowa 488.
- 531 *Manderschid vs. The City of Dubuque*, 25 Iowa 108.
- 532 *O'Laughlin vs. The City of Dubuque*, 42 Iowa 539.
- 533 *Robinson vs. The City of Cedar Rapids*, 100 Iowa 662.
- 534 *Ross vs. The City of Davenport*, 66 Iowa 548.
- 535 *Fulliam vs. The City of Muscatine*, 70 Iowa 436.
- 536 *Laws of Iowa*, 1856-1857, p. 179.
- 537 *Laws of Iowa*, 1854-1855, p. 19, 1856-1857, pp. 288, 348.
- 538 *Laws of Iowa* (Extra Session), 1856, p. 50.
- 539 *Laws of Iowa*, 1850-1851, pp. 121, 122.
- 540 *Laws of Iowa*, 1856-1857, pp. 94-99.
- 541 *Laws of Iowa*, 1856-1857, p. 71.
- 542 *Laws of Iowa*, 1856-1857, p. 364.
- 543 *Compiled Code, 1919*, sec. 4417.
- 544 *Compiled Code, 1919*, secs. 4362, 4363.
- 545 *Compiled Code, 1919*, sec. 4420.

CHAPTER XIV

- 546 *Laws of Iowa*, 1850-1851, p. 117.
- 547 *Davenport Gas & Electric Company vs. City of Davenport*, 124 Iowa 22.
- 548 *Laws of Iowa*, 1872, Ch. 78, 1888, Ch. 11, 1890, Ch. 11.
- 549 *Code of 1897*, sec. 955.
- 550 *Code of 1897*, sec. 956.
- 551 *Code of 1897*, secs. 958 (767, 768), *Compiled Code, 1919*, secs. 4369 (4011, 4012).
- 552 *Compiled Code, 1919*, secs. 4335 (3966-3973).

553 *Code of 1897*, secs. 958 (742-750).

554 *Compiled Code, 1919*, secs. 4333 (3981-3993).

555 *Laws of Iowa, 1907*, Ch. 47; *Compiled Code, 1919* secs. 4337-4339; *Laws of Iowa, 1923*, Ch. 138.

556 *The City of Keokuk vs. Scroggs*, 39 Iowa 447; *Brockman vs. The City of Creston*, 79 Iowa 587.

557 *Becker vs. Keokuk Water Works*, 79 Iowa 419.

558 *Burlington Water Co., vs. Woodward*, 49 Iowa 58 at 62.

559 *Swanson vs. City of Ottumwa*, 118 Iowa 161.

560 *City of Ottumwa vs. City Water Supply Co.*, 119 Federal Reports 315.

561 *Hall vs. City of Cedar Rapids*, 115 Iowa 199 at 200.

562 *Cedar Rapids Water Co., vs. Cedar Rapids*, 118 Iowa 234.

CHAPTER XV

563 *The Iowa Journal of History and Politics*, Vol. XVIII, p. 265.

564 *The Iowa Journal of History and Politics*, Vol. XVIII, p. 266.

565 *The Iowa Journal of History and Politics*, Vol. XVIII, pp. 266, 267.

566 *McQuillin's Municipal Corporations*, Vol. I, pp. 460, 461.

567 *McQuillin's Municipal Corporations*, Vol. I, p. 463-465.

568 *Constitution of Iowa, 1857*, Art. III, Sec. 30.

569 *Laws of Iowa, 1858*, pp. 20, 110, 152; *Ex Parte Samuel Pritz*, 9 Iowa 30; *Davis & Bro. vs. Woolnaugh*, 9 Iowa 104.

570 *Laws of Iowa, 1860*, p. 108, 1862, pp. 41, 81, 104, 136; *Town of McGregor vs. Baylies*, 19 Iowa 43.

571 *Laws of Iowa, 1876*, Ch. 116, sec. 22, 1878, p. 25, 1882, p. 51.

572 *State of Iowa vs. City of Des Moines*, 96 Iowa 521.

573 *Compiled Code, 1919*, Title XIII, Chs. 39, 40, 41.

574 *Laws of Iowa, 1890*, p. 27, 1894, Ch. 7, 1907, Chs. 46, 47, 1909, Ch. 64, 1919, p. 191; *Compiled Code, 1919*, secs. 4303, 4306 (3523), 4408.

575 *Haskel vs. The City of Burlington*, 30 Iowa 232.

576 *Laws of Iowa, 1858*, p. 390; *Compiled Code, 1919*, secs. 4472-4474.

577 *Phillips vs. The City of Council Bluffs*, 63 Iowa 576.

⁵⁷⁸ *Code of 1851*, Ch. 42.

⁵⁷⁹ *Code of 1851*, secs. 651, 654, 658, 671.

⁵⁸⁰ Of the smaller towns accepting the plan, the following may be referred to : *Laws of Iowa*, 1874 (Private Laws), p. 38, 1878, pp. 4, 57, 1880, p. 53.

⁵⁸¹ *Laws of Iowa*, 1858, p. 343.

⁵⁸² Dillon's *Municipal Corporations* (5th edition), Vol. I, pp. 245, 246.

⁵⁸³ Horack's *Special Municipal Legislation in Iowa* in *The American Political Science Review*, Vol. XIV, pp. 423-445.

⁵⁸⁴ *Laws of Iowa*, 1917, Ch. 174.

⁵⁸⁵ *Laws of Iowa*, 1907, Ch. 47.

⁵⁸⁶ *Compiled Code*, 1919, sec. 4214.

⁵⁸⁷ *The City of Clinton vs. Cedar Rapids and Missouri R. R. Co.*, 24 Iowa 455.

INDEX

INDEX

- Accounts, municipal, keeping of, 125;
uniform system of, 125; examiners of,
125, 126
- Albia, charter of, 25, 187
- Aldermen, authority of, 19, 20, 31, 32,
193; election of, 41, 42, 66, 67, 192,
193, 194, 195, 224, 225; compensa-
tion of, 43, 44, 208; appointments
made by, 49; number of, 65, 255,
256; removal of, 71; qualifications of,
192, 193; oath of, 193, 234 (see also
Council and Councilmen)
- Alleys, control of, in special charter
cities, 147-164
- America, laws brought to, 19; general
incorporation acts in, 22; method of
granting charters in, 26
- American cities, close corporations in,
19, 20
- Amusements, regulations of, 98, 99, 106,
228
- Animals, regulations relative to, 114
- Appendices, 187-243
- Appraisers, board of, assessment made
by, 151
- Assessments, revenue obtained by, 118;
method of, 132-134; levy of, 148, 213
- Assessments, special, popular vote on,
40; levy of, 138, 155
- Assessor, city, election of, 41, 42, 224,
225; bond of, 47, 52; appointment
of, 48, 212; assessments made by,
129; duty of, 132, 133; oath required
of, 234
- Attorney, election of, 42
- Auctioneers, licenses granted to, 97
- Auditor, city, statement of accounts
made by, 126; duty of, relative to
assessments, 134
- Auditor of State, duty of, 125, 126
- Author's preface, 9-11
- Bailliff, duty of, 140
- Banks, municipal funds in, 127
- Banner* (Davenport), notice in, 210
- Barbed wire, prohibition of use of, 115
- Bath-houses, provisions for, 89, 90, 103
- Bellevue, charter of, 25, 187
- Bill of Rights, provisions of, 28
- Billiard halls, regulations of, 106
- Billiard tables, licenses for, 97
- Bloomfield, charter of, 25, 187, 189,
236-238; population of, 236; home
rule in, 236; boundaries of, 236;
elections in, 236; power of council
of, 237; municipal regulations in,
237; vacancies in offices in, 237; fail-
ure of charter of, 249
- Bloomington, charter of, 24, 25, 187,
189 (see also Muscatine)
- Board of review, creation of, 137;
work of, 137; appeal from, 137, 138
- Boilers, inspection of, 111, 113
- Bonds, municipal, elections relative to,
38, 40; requirements relative to, 47,
126; money obtained by, 119, 171,
172; fund for payment of, 131; is-
suanee of, for civic improvement, 152
- Bonds, officers', requirement of, for city
officials, 52, 53, 70, 234; fixing of,
253
- Boroughs, members of Parliament elect-
ed from, 18; chartering of, during
colonial period, 19
- Borrowing, money obtained by, 118-120
- Bridges, control of, 85, 86; tax levied
for, 131, 132
- Brokers, licenses issued to, 98, 99
- Building code, adoption of, 109
- Buildings, authority of cities relative to,
108-110, 112, 242, 243
- Burlington, charter of, 23, 24, 174, 187,
189; convening of legislature at, 24;
restriction on debt of, 171
- Burriss City, charter of, 25, 187
- By-laws, passage of, 74
- Camanche, charter of, 25, 33, 187, 223-

- 235; elections in, 36, 39, 40, 43, 224, 234, 235; officers in, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 57, 66, 67, 68, 71, 224, 234; council in, 72, 73, 163, 227, 233, 235, 256; ordinances in, 74, 75, 78, 80, 227; authority of, over wharves and docks, 81, 83, 228; ferries regulated by, 84; public property of, 90, 182, 183; control of schools in, 93, 95, 228-230; regulation of sale of liquor in, 100, 228; hospitals in, 103; regulation of building in, 109; fire companies in, 112, 227; public safety in, 114, 227; financial powers of, 119, 124, 129, 133, 136, 231, 232; mayor of, 142, 144, 224; improvement of roads and streets in, 149, 153, 154, 228, 231; boundaries of, 223; division of, into wards, 223, 224; population of, 223, 256; restrictions against disorderly conduct in, 227; regulation of amusements in, 228; health regulation in, 228; regulation of transportation in, 228
- Capital, taxation of, 134
- Care, decision relative to, 161
- Cattle, ordinances concerning, 114, 115
- Cedar County, regulation of live stock in, 114
- Cedar Rapids, charter of, 25, 187; franchise in, 88; water-works in, 122; court decision relative to, 122; indebtedness of, 122, 172
- Cemeteries, municipal control of, 89, 104, 105, 164
- Centerville, charter of, 25, 187; veto of bill relative to, 249
- Charles City, charter of, 25, 187
- Charters, special (see Special charters)
- Chimneys, regulation of, 113
- Circuit courts, jurisdiction of, 143; procedure in, 145
- Cities, general incorporation act for, 26; police power of, 157; liabilities of, for injuries on streets, 158, 159; negligence of, 161; power of, to purchase property, 162; classification of, 175, 176 (see also Municipalities)
- Citizenship, requirement of, 45, 67
- City courts, jurisdiction of, 141, 145
- City hall, purchase of, 89, 90
- City manager plan, adoption of, in special charter cities, 183, 184
- Civic Congress, formation of, 96
- Clerk, provision for, in city courts, 139
- Clerk, city, duties of, 36, 56-58, 65, 76, 126, 133, 134, 138, 140, 208
- Clinton, charter of, 25, 183, 187
- Clinton County, school fund commissioner of, 94
- Code of 1851*, provisions of, relative to incorporation of cities, 179, 180
- Code of 1873*, provisions of, relative to franchises, 173
- Code of 1897*, provisions of, relative to special charter cities, 35, 43, 59, 70, 101, 104, 107, 113, 167, 168
- Collector, city, duties of, 135, 136, 137, 232
- Colonies, special charters in, 17, 18; independence of, 20
- Commission, creation of, for levee improvement, 83, 84
- Commission plan, adoption of, in special charter cities, 183, 184
- Commissioners, appointment of, 48, 163
- Commissioners, Board of, assessments made by, 154
- Common Law, bringing of, to America, 19
- Commons, ownership of, 89, 104, 164
- Community Civic Congress, formation of, 96
- Compensation, use of fee system in, 43; ordinances relative to, 69 (see also Officers)
- Compiled Code, 1919*, provisions in, relative to special charter cities, 46, 130, 149
- Constitution of Iowa, 1857, oath to support, 48, 70, 71; prohibition of special charters and laws by, 25, 26, 28, 123, 170, 175, 176; provisions of, relative to municipal indebtedness, 40, 121, 122, 123; mention of, 75; adoption of, 174; classification of cities authorized by, 175
- Constitution of the United States, oath required in support of, 48, 70, 71; eighteenth amendment to, 101
- Constitutional amendments, adoption of, 22

- Contracts, making of, by special charter cities, 87, 88
- Cook and Sargent, addition of, 210
- Corporations, definition of, 32; contracting power of, 87; property owned by, 91; taxes of, 123, 124; funds of, 123-127
- Corporations, close, cities governed by, 20
- Corporations, municipal, character of, 32, 33; regulations of occupations in, 97-99; police powers of, 97-116, 157; cemeteries owned by, 104; function of, as agent of the state, 117; treatise on, 117; financial power of, 117, 120-123, 128-138; indebtedness of, 120-123; judicial powers of, 139-146; liability of, 160, 161; powers exercised by, in control of public utilities, 170
- Corporations, private, character of, 32, 33
- Corporations, public, character of, 32, 33
- Corporations, quasi-private, reference to, 117
- Council, city, authority of, 19, 20, 54, 74, 75, 78, 92, 93, 237; duties of, 36, 41, 45, 46, 48, 50, 51, 52, 53, 54, 59, 60, 74, 75, 78, 92, 93, 97, 98, 100, 101, 102, 103, 104, 112, 115, 118, 124, 125, 134, 147, 151, 154, 163, 193, 196-201, 204, 205, 206, 212, 213, 215, 216, 219, 227, 228, 230, 231, 232, 233, 234, 235, 236, 238; organization of, 65-73; composition of, 65, 66, 234; vacancies in, 66; election of members of, 66, 67; qualification of members of, 67, 68; compensation of members of, 69, 70, 192, 193; bond of members of, 70; oath of members of, 70; removal of members of, 71, 72; quorum of, 72; presiding officer of, 72; meetings of, 72, 73, 201, 227, 233; coöperation with, 96; financial responsibility of, 124, 126, 127, 129, 132, 133, 134, 138, 153, 155, 156, 157, 231, 233, 234; work of, as board of review, 137; street commissioners appointed by, 147; exercise of eminent domain by, 162; erection of public buildings by, 162; reports made to, 169, 170; appeals from, 220
- Council Bluffs, charter of, 25, 187, 189; court established at, 140
- Councilmen, compensation of, 38, 69, 70, 192, 193; restrictions upon, 67, 68; election of, 236; authority of, 237 (see also Council, city, and Aldermen)
- County, taxes levied for, 128
- County commissioners, powers of, 148
- County court, election returns sent to, 240; date of election fixed by, 240; authority of, 243
- County judge, appointment made by, 154, 238; returns made to, 163, 224; tax books furnished by, 212; election called by, 224
- County officers, taxes levied by, 153
- Courts, ordinances received as evidence in, 80; decisions of, 107, 108, 159, 170; establishment of, 139; officers of, 139, 140; kinds of, in cities, 140; procedure of, in cities, 145, 146
- Crematories, ownership of, 89; regulation of, 104, 105; property taken for use of, 164
- Crown, charters granted by, 26
- Culverts, requirements for, 151; damages for, 158
- Damages, liability for, 157, 158; assessment of, 163
- Davenport, charter of, 24, 25, 33, 149, 187, 189, 191-222; elections in, 36, 37, 38, 41, 42, 43, 194, 195, 221, 222; electors in, 38, 39; provisions concerning officers in, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 69, 71, 192, 193, 205, 206, 213, 215, 221, 222; duties of officers in, 57, 59, 205, 206; board of public works in, 63; board of water-works in, 63; council of, 66, 67, 68, 73, 75, 76, 192, 193, 196-201, 208, 213, 220, 256; ordinances in, 75, 76, 77, 79, 80, 197-201, 208; authority of, over wharves and docks, 81, 82, 83; ferries regulated by, 84; control of roads and bridges by, 85, 212, 215; public property of, 90; control of schools in, 92, 93, 95; licenses grant-

- ed in, 98; regulation of sale of liquor by, 100; regulation of health in, 101, 102; hospitals in, 103; regulation of nuisances in, 105, 107; establishment of standards in, 110; fire regulations in, 112; public safety in, 114; financial powers of, 118, 119, 121, 124, 129, 133, 135, 136, 205, 212, 213, 215; indebtedness in, 121, 122, 205, 213; judicial officers in, 140, 141, 142, 144, 206; improvement of streets in, 148, 149, 153, 154, 159, 160, 204, 205; suit for damages against, 160; exercise of eminent domain by, 163; public utilities in, 166; special legislation for, 176, 183; control of property in, 182, 183, 203, 204; population of, 191, 256; boundaries of, 191, 192, 209, 210, 211, 214; mayor, 194, 201-206, 215; punishment of offenders in, 205; court procedure in, 206, 215; referendum in, 207; compensation of aldermen in, 208, 221; enforcement of charter of, 209; additions made to, 209, 210, 214; division of, into wards, 211; code provisions relative to, 213; assessment of damages in, 216; public improvements in, 216, 221; oath of commissioners of, 217; appropriation of property by, 217-220; removal of commissioners in, 219
- Davenport Gazette*, notice in, 210, 222
- Debts, rules concerning, 198
- Des Moines, charter of, 25, 187; street improvement in, 153; aldermen in, 255
- Dillon, John F., corporation defined by, 32; discussion of nuisances by, 105, 106
- District courts, jurisdiction of, 137, 138, 143, 144, 145; procedure in, 145
- Docks, power of special charter cities over, 81, 82, 83
- Dogs, regulations relative to, 114, 115
- Drainage, laws relative to, 86
- Dubuque, charters of, 24, 25, 26, 187, 189, 257; duty of clerk in, 139; court established at, 140; street improvement in, 153; special legislation for, 176, 177; veto of bill relative to, 249
- Eddyville, charter of, 25, 188
- Editor's introduction, 7
- Education, growth of, in Iowa, 90
- Education, board of, election of, 42, 93
- Election laws, general, application of, to special charter cities, 38
- Elections, provision for, in special charter cities, 35-40, 197, 198, 238; conduct of, 37, 234, 235; kinds of, 37, 38; rules of, 194, 195; dates of, 194, 224, 236; voters at, 195
- Elections, special, provisions for, 37, 38, 45
- Electors (see Voters)
- Electric plants, operation of, 120, 131, 166, 167, 168
- Eminent domain, exercise of, 160, 162, 203, 204
- Engineer, city, election of, 42; street constructions approved by, 151
- England, special charters in, 17-19, 26; control of cities in, 18; lack of self-government in, 18, 19; laws brought from, 19
- Evening News*, act to be printed in, 222
- Executive Council, duty of, relative to assessments, 134
- Exhibitions, license issued for, 97
- Fairfield, charter of, 25, 188, 189
- Farm products, inspection of, 110, 111
- Farmington, charter of, 24, 25, 188, 189, 253
- Fee system, use of, 51
- Ferries, control of, 84, 85
- Finance, regulation of, in special charter cities, 117-127
- Fines, imposing of, 78, 79, 117, 257
- Fire companies, organization of, 112
- Fire department, inspection of buildings by chief of, 108; support of, 120, 131, 132
- Fire escapes, construction of, 113
- Fire protection, law relative to, 97, 110, 112-114; tax for, 131
- Firearms, regulation of use of, 112, 114
- Firemen, pensions given to, 113, 114
- Fireworks, regulation of use of, 113

- Floods, protection of property from, 83, 84
- Food, inspection of, 102, 111
- "Fort" Des Moines, charter of, 25
- Fort Dodge, special legislation for, 177
- Fort Madison, charter of, 23, 24, 25, 174, 188, 190
- Franchises, granting of, 88, 167, 172; revenues received from, 118
- Funds, public, collection and distribution of, 123-127; transfer of, 127; deposit of, in banks, 127
- Gambling, regulation of, 97, 106, 107
- Games of chance, license for, 97
- Gas works, maintenance of, 120, 131, 166, 168
- General Assembly, charters granted by, 27; restrictions on, 28; laws passed by, 60, 64, 68, 87, 89, 103, 104, 109, 111, 116, 130; grant authorized by, 159, 160; streets under control of, 160; attitude of, toward special charter cities, 178; incorporation acts passed by, 249 (see also Legislature)
- Glenwood, special charter abandoned by, 11; charter of, 25, 33, 149, 188; publication of ordinances in, 27; elections in, 36, 42, 43; power of electors in, 40; provisions concerning officers in, 44, 45, 46, 47, 48, 52, 53, 54, 66, 67, 68, 69, 71; duty of clerk in, 57; aldermen in, 66, 67, 68, 256; council in, 73, 75, 119; authority of, over wharves, docks, and ferries, 82, 83, 84; control of schools in, 93; regulation of sale of liquor in, 100; regulation of health in, 101, 103; hospitals in, 103; fire regulations in, 112; public safety in, 114; financial powers of, 119, 124, 129, 133, 136; duties of mayor of, 142, 144; improvement of streets in, 149, 154; population of, 256
- Governors, colonial, appointment made by, 20
- Governors, provincial, charters granted by, 19
- Grading, tax for, 131 (see also Streets)
- Grocers, licenses issued to, 98, 99
- Gunpowder, regulation of sale of, 112
- Guttenberg, charter of, 25, 188, 190
- Halls, erection of, 162
- Hawkers, licenses issued to, 98
- Health (see Public health)
- Health, Board of, members of, 48, 49, 102; duties of, 61, 62, 111; provision for, 61, 102; physician appointed by, 62
- Heating plant, authority for maintenance of, in special charter cities, 168
- Highways, improvement of, 150; municipal control of, 159 (see also Roads)
- Hirschl, Samuel, land of, 210
- Historical introduction, 17-22
- Home rule, necessity of, 181, 182; charter for, 239-243
- Home rule charter, adoption of, 239, 240, 241; provisions of, 240; alteration of, 240; legislative power of cities under, 240, 241
- Horack, Frank E., acknowledgment to, 11
- Hospitals, municipal control over, 89, 103, 104; erection of, 162; property taken for use of, 164
- Housing, regulation of, 109, 110, 115
- Improvements, city, taxation for, 131, 132; laws relative to, 110
- Incorporations, prohibition of special acts for, 22; passage of general act for, 26
- Indebtedness, municipal, limitations on, 85, 120-123, 126, 170, 213; bonding of, 125
- Initiative, use of, in securing charters, 29; use of, in votes on special charters, 178, 179, 180
- Injuries, damages for, 159
- Innkeepers, licenses issued to, 100
- Inspection, police power relative to, 110, 111
- Inspection card, use of, 111
- Inspector, appointment of, 111
- Interurbans, regulations of, 151
- Iowa, local government in, 17; early settlers of, 17, 23; special legislation prohibited in, 22, 25, 26; first special charters granted in, 23; incorporation of special charter cities in, 23-34, 36, 134, 174, 175; admission of, 25;

- general incorporation law of, 29, 249; laws in, relative to special charters, 30, 36; election laws in, 38; selection of officers in, 41; fee system of payment in, 44; salaries in, 44; regulation of ferries in, 84; aid given railroads in, 87; laws of, relative to contracts, 87; educational development in, 90; memorial buildings erected in, 91; parks in, 91, 92; laws of, concerning liquor, 100, 101; early cities in, 101; passage of housing law in, 109; revenue obtained in cities of, 117, 118; regulation of transportation by, 151; classification of cities in, 177; home rule in, 178-180 (see also Constitution of Iowa, 1857)
- Iowa Territory, meeting of first legislature of, 24; special charters granted by, 174
- Iowa City, charter of, 24, 25, 28, 188, 190; legislature convened at, 25
- Iowa Journal of History and Politics*, *The*, article in, 9
- Iowa Register* (Camanche), publication of charter in, 235
- Iowa River, navigation on, 82
- Iowa State Democrat*, notice to be printed in, 222
- Jails, provisions for, 90, 162
- Jones County, regulation of live stock in, 114
- Judicial officers, provisions relative to, 139, 140
- Jury, right of trial by, 144
- Justice, administration of, 139-146
- Justices of the peace, oath administered by, 48; court held by, 139; mayor's duty as, 141; duty of, 142; courts of, 145, 242
- Keokuk, charter of, 25, 188, 190; court established at, 140; control of streets in, 157; special legislation for, 177
- Keosauqua, charter of, 24, 25, 188, 190
- King, privileges granted by, 18; charters from, 19
- Kingston-upon-Hull, charter granted to, 18
- Knoxville, charter of, 25, 188; special legislation for, 177
- Labor, requirement of, for street improvement, 150
- Land, condemnation of, for public improvement, 164
- Laws, adoption of, from older settlements, 17
- League of Iowa Municipalities, support of, 95, 96; delegates to, 96
- Le Claire, Antoine, lands reserved for, 211, 214
- Le Claire, charter of, 25, 188
- Legislation, special, era of, 21; prohibition of, 28, 29, 30; evasion of law relative to, 31
- Legislature, Iowa, first meeting of, 24; control of special charter cities by, 30, 31; authority of, 74; laws passed by, relative to courts, 145, 146 (see also General Assembly)
- Legislatures, State, power of, in granting charters, 20, 21
- Levee improvement commission, appointment of, 50, 83; duty of, 64; licenses prescribed by, 84; regulations prescribed by, 85
- Libraries, laws relative to, 89, 91, 131
- Licenses, revenue secured by, 117; granting of, in cities under home rule, 243
- Liens, creation of, by taxes, 137, 138
- Light, law relative to, 110
- Liquor, regulations relative to, 97, 99-101, 106
- Live stock, regulation of, 114
- Loans, regulations relative to, 118-121, 126
- Lyons, charter of, 25, 188, 190
- Maquoketa, charter of, 25, 188; control of streets in, 162
- Marines, memorials in honor of, 91
- Markets, municipal, provision for, 90; regulation of, 97
- Marshal, city, election of, 41, 42, 224, 225, 236; bond of, 47, 52; appointment of, 49; duties of, 58, 123, 124, 129, 133, 134, 139, 140, 196, 197, 226, 237; authority to dispense with, 59; collections made by, 129, 136, 234; duty of, relative to assessments, 133; duty of, as court officer, 139;

- committee selected by, 163; oath of, 234
- Marshal, deputy, appointment of, 58
- Mayor, authority of, 19, 31, 32, 144, 201-203; elections called by, 36, 234, 235; election of, 41, 194, 195, 224, 225, 236; appointments made by, 41, 45, 46, 49, 50, 55, 56, 83, 102, 168; compensation of, 43, 44, 202; judicial powers of, 43, 139, 140, 141, 142, 202, 237; oath administered by, 48; ex officio capacity of, 50, 55, 56, 139; powers of, relative to removals, 54; ordinances executed by, 55; proclamations by, 55; duties of, 55, 56, 201-203, 204, 208, 225, 226, 236, 237, 238; membership of, in council, 55, 65, 66, 72, 73, 75, 76; meetings called by, 72; veto power of, 76; duty of, on levee commission, 84; duty of, in collection of taxes, 135; reports made to, 163; oath of, 193, 234; term of, 194; bond of, 202; salary of, 202; punishment of, 202, 203; absence of, 215; qualifications of, 224; inability of, 225; approval of bond by, 253
- Mayor's court, establishment of, 140, 242; provisions relative to, 144, 145
- McGregor, special legislation for, 177
- McQuillin, Mr., discussion of revenue by, 117, 118
- Measures, standard, regulation of, 110
- Memorial buildings, 91
- Merchants, licenses issued to, 98, 99
- Michigan, laws adopted from, 17; charters granted by, 24
- Milk, inspection of, 102, 103, 110
- Mississippi River, region east of, 17; wharves on, 81; navigation on, 81, 82; riparian rights along, 82; cities located on, 90, 175
- Mitchell, G. C. R., addition of, 210
- Money, appropriation of, for municipal league, 95, 96; borrowing of, in special charter cities, 118-120; deposit of, in banks, 127
- Money changers, licenses issued to, 98
- Motor vehicles, regulation of, 115; development of, 115
- Mount Pleasant, charter of, 24, 25, 26, 188, 190
- Municipal corporations (see Corporations, municipal)
- Municipal courts, establishment of, 140, 143; jurisdiction of, 143, 144, 146; procedure in, 145, 146
- Municipal debts, limitations on, 85
- Municipal government, adoption of laws relative to, 17; introduction of, in America, 19; choice of type of, in special charter cities, 183
- Municipalities, government of, in United States, 20, 21; restrictions on power of, 20, 21, 40; corporate character of, 31; ordinance power of, 74; power of, in contracting, 87, 88; early charters of, 101; power of, to borrow money, 118-120; indebtedness of, 120-123; care of funds of, 123-127; taxation in, 128-138; judicial power of, 139-146; control of streets in, 147-164; dependence of, upon public utilities, 165; classification of, 177; adoption of home rule by, 239-243 (see also Cities and Towns)
- Muscataine, special legislation for, 31; charter of, 33, 149; elections in, 36, 37, 38, 41, 42, 43; electors in, 38, 39; provisions concerning officers of, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 70; duty of clerk in, 57; duty of marshal in, 59; board of public works in, 63; levee improvement commission in, 64; council in, 66, 67, 68, 72, 73, 74, 75, 118; removal of officers of, 71; ordinances in, 74, 75, 77, 78, 80; wharves and docks in, 81, 83; ferries regulated by, 84; bill fostered by Senator from, 85; control of bridges in, 85; public property of, 90; control of schools in, 92, 95; licenses granted by council of, 97, 98; regulation of sale of liquor in, 100; regulation of health in, 101; hospitals in, 103; cemeteries in, 104; regulation of nuisances in, 107; authority to appoint inspectors in, 111; fire companies in, 112; public safety in, 114; financial powers of, 118, 124, 129, 130, 132, 134, 135, 136; peace officers in, 139-140; judicial duties of mayor in, 141, 142; authority of mayor in, 144; regula-

- tion of streets in, 147, 148, 154, 162, 163; number of aldermen in, 256; population of, 256 (see also Bloomington)
- Muscataine County, right of, to charter ferries, 81
- Nashville, charter of, 24, 188
- Natatoriums, ownership of, 89; property taken for use of, 164
- Navigation, laws relative to, 81, 82
- New Jersey, classification of cities in, 176
- New York, classification of cities recognized by, 176
- New York City, first charter of, 19
- Newton, charter of, 25, 188
- Northwest (see Old Northwest)
- Notes and references, 247-271
- Nuisances, regulation of, 97, 105-108, 227; classification of, 105, 106; court decisions relative to, 107, 108
- Nurses, services of, in war, 91
- Oath, requirement of, 48, 53, 70, 234
- Occupations, regulation of, 97-99
- Offenders, punishment of, 205
- Officers, school, election of, 95
- Officers in special charter cities, kinds of, 41, 48; election of, 41, 42, 197, 198, 236; terms of, 42, 43, 50, 51; compensation of, 43, 44, 51, 52; filling of vacancies in, 45, 46; qualifications of, 45, 52; bonds of, 47, 52, 53, 234; oath of, 48, 53, 54, 234; appointment of, 48-50; removal of, 54, 71; punishment of, for diversion of funds, 126; reports by, 205; books kept by, 205, 206; duties of, 234
- Offices, vacancies in, 45, 46, 206
- Ohio, laws adopted from, 17; general incorporation law passed in, 28; constitutional prohibition of special charter acts in, 28, 29; special charters abolished in, 29
- Old Northwest, territory of, 17; settlers from, 23
- Ordinances, scope of, 74; force of, 74, 139; passage of, 74-80, 101, 197-201; signing of, 76; recording and publication of, 76-78; general law relative to, 77, 78; penalties for violation of, 78, 79, 139, 143, 144; evidence of, 79, 80; franchise granted by, 172; appeals from, 207
- Oskaloosa, charter of, 25, 188, 190
- Otto, Helen, acknowledgment to, 11
- Ottumwa, charter of, 25, 188, 190; municipal indebtedness in, 172
- Park commissioners, election of, 42; term of, 43; provision for, 92; duty of, 152
- "Park life", development of, 90
- Parks, ownership of, 89; control of, 91, 92; establishment of, 104; tax levied for, 131; property taken for use of, 164
- Parliament, influence of the king over, 18; charters granted by, 26
- Pawnbrokers, licenses issued to, 98, 99
- Pedlars, licenses issued to, 98, 99
- Penalties, imposing of, 78
- Pennsylvania, classification of cities in, 176
- Pensions, giving of, to firemen, 113, 114
- Playgrounds, provisions for, 90
- Plumbing, inspection of, 102, 111
- Police courts, establishment of, 140; procedure in, 145
- Police judges, election of, 42; duties of, 140; jurisdiction of, 142
- Police magistrates, duties of, 142
- Police matrons, appointment of, 50
- Police power, exercise of, by special charter cities, 97-116, 184; enforcement of, 157
- Policemen, appointment of, 49
- Political institutions, bringing of, by settlers, 17
- Poll taxes, assessment of, 150
- Primary road fund, payments made from, 157
- Princeton, charter of, 25, 188
- Products, inspection of, 110, 111
- Property, corporate, taxation of, 133
- Property, private, exemption of, from taxation, 133; sale of, for taxes, 135, 136, 137, 154, 232; redemption of, 136, 137, 154, 232; assessment of, for street improvement, 148, 156; taking of, for municipal use, 148, 162-164, 217-222; control of, in

- special charter cities, 182, 184, 241, 242
- Property, public, protection of, from floods, 83, 84; control of, by special charter cities, 88-91
- Public baths, property taken for use of, 164
- Public credit, safeguarding of, 39, 40
- Public health, safeguarding of, 61, 62, 97, 101-103, 109, 111, 241
- Public safety, promotion of, in special charter cities, 114-116
- Public utilities, establishment of, 120; monopolistic character of, 165; judicial decisions relative to, 165; laws relative to, 165, 170; charter provisions relative to, 165, 166; regulation of, in special charter cities, 165-173; interpretation of powers relative to, 170-173
- Public works, board of, appointment of, 49; provision for, 61, 62; personnel of, 62; duties of, 62, 63, 111; inspection of buildings by, 108
- Quarantine, laws relative to, 101, 102
- Racing, prohibition of, in streets, 114
- Railroads, aid given to, 86, 87; assessments against, for street improvement, 155, 156; use of streets by, 159; regulation of, in special charter cities, 167
- Recorder, city, authority of, 19; elections called by, 36; election of, 41, 42, 224, 225, 236; bond of, 47; oath administered by, 48; appointment of, 48; membership of, in council, 65, 72; statement of accounts made by, 126; duty of, relative to assessments, 134; duties of, 226, 237, 238; oath required of, 234
- Recorder's court, establishment of, 140
- Referendum, use of, in securing charter, 27, 28; use of, in reference to public utilities, 168
- Relief, outdoor, provision for, 103
- Removal, law relative to, 54
- Revenue, source of, 117, 118; anticipation of, 125, 126; transfer of, 138
- Revision of 1860*, provision in, relative to drainage, 86
- Road commissioners, appointment of, 147
- Road districts, establishment of, 153
- Road supervisors, appointment of, 147
- Roads, taxes for, 130, 131, 132, 215; work on, 204; power of Davenport over, 212 (see also Highways)
- Sailors, memorials in honor of, 91
- Salem, charter of, 24, 188, 190, 249
- Sanitation, rules relative to, 102, 110
- School boards, election of, 95
- School districts, independent, formation of, 95
- School fund commissioner, duties of, 230
- Schoolhouses, support of, 229, 230
- Schools, municipal control of, 92-95; provisions relative to, 228
- Scott County, bill introduced by representative from, 102; regulation of live stock in, 116; road tax in, 212, 215
- Settlers, political institutions of, 17
- Sewers, tax for, 131; construction of, 152
- Sexton, election of, 42
- Shambaugh, Benj. F., acknowledgment to, 11
- Sheep, regulations relative to, 114, 115
- Shows, licenses for, 97, 106
- Sidewalks, location of, 153
- Sinking fund, taxes for, 131; establishment of, to pay for public utilities, 168
- Sioux City, charter of, 25, 189, 249; special legislation for, 176
- Slaughter-houses, regulation of, 106
- Soldiers, memorials in honor of, 91
- Sovereignty, attribute of, 128
- Special charter cities, status of, 31-34, 180; laws relative to, 34, 46, 69, 70, 83, 85, 99, 101, 102, 103, 104, 106, 111, 113, 125, 126, 130, 136, 150, 153, 155, 157, 167, 179, 184; elections in, 35-40; officers in, 41-54; general law applicable to, 49, 76, 77, 92, 95; authority to dispense with marshal in, 59; election of treasurer in, 59; election of collector in, 59; right of, to impose fines, 62; special powers of, 81-96; authority of, in regulating ferries, 84, 85; power of, to aid railroads, 87; power of, to

- make contracts, 87, 88; property acquired by, 88, 89; ownership of property by, 91; school laws applicable to, 95; regulation of occupations in, 97-99; regulation of sale of liquor in, 99-101; building regulations in, 110; financial power of, 117-138, 184; revenue obtained in, 117, 118; special taxes in, 131; powers of, as corporations, 139; judicial duties of mayor in, 141; authority of, over streets, 149, 150; regulation of public utilities in, 165-173; court decision relative to municipal indebtedness in, 172; importance of, 174, 175; location of, 175; growth of, 175; control of transportation in, 175; home rule in, 178; consideration of, as a distinct class, 182, 183, 184; municipal functions in, 184; authority of, over property, 184; police powers of, 184; advantages of, 184; disadvantages of, 184; aldermen in, 255
- Special charters, granting of, 9-17, 134; abandonment of, 11, 178, 179, 184; number of, in Iowa, 11, 23-26, 33; creation of, in England, 17-19; granting of, in colonies, 19, 20; control over, by State legislature, 20-22, 28-31, 33; consideration of, as contracts, 21; end of legislation for, 26; securing of, 26-28; passage of bills for, 27; adoption of, by the people, 27, 28; rejection of, 28; amendments of, 29, 38, 39, 183, 209-222; general statutes not applicable to, 30; laws relative to, 30, 38, 79, 80; provisions in, relative to election, 36; compensation restricted by, 44; powers conferred by, 81-96; interpretation of, 108; provisions of, relative to streets, 147-149; disadvantages of, 180-182; advantages of, 182-184; statutory references to, 187-190; vote on, in Davenport, 206, 207, 209; preference for, 249; failure of, to become effective, 249
- Special legislation, increase of, 174-178; definition of, 176
- Sports, regulation of, 99
- Standards, establishment of, 110
- State, agents of, 32; residence in, 67; ownership of rivers by, 82; municipalities as agents of, 97; corporations as agents of, 117; taxes levied for, 128; eminent domain rights of, 160
- States, formation of, from Old Northwest, 17; special legislation prohibited in, 22
- Statute of limitations, provisions of, 257
- Statutes, special powers conferred by, 81-96; court decisions relative to, 108
- Steamboilers, inspection of, 111
- Stocks, taxation of, 134
- Street commissioners, election of, 42; appointment of, 148, 212; duties of, 217
- Street railways, regulation of, 151, 166, 167; assessment against, for street improvement, 155, 156; franchise of, 160
- Streets, improvement of, 131, 153-157, 204, 205, 228; municipal control of, 147, 157; control of, in special charter cities, 147-164; lighting of, 148; opening of, 150; naming of, 150; oiling of, 150; municipal liabilities relative to, 157-162; court decision relative to, 157, 158; exercise of eminent domain with reference to, 162; property taken for improvement of, 164; width of, 211; laying out of, 216; regulation of, in cities under home rule, 242
- Suffrage, rules relative to, in special charter cities, 38, 39
- Superior courts, establishment of, 140, 143; jurisdiction of, 143; procedure in, 145; population required for establishment of, 266
- Supreme Court of Iowa, decision of, relative to special charters, 30; decision of, relative to mayor's right to vote, 66; ruling of, relative to wharves, 82; decision of, relative to schools, 95; decision of, relative to animals running at large, 115; decisions of, relative to municipal indebtedness, 121, 122, 123, 170, 171, 172; decision of, relative to streets, 158, 159, 160, 173; decision of, relative to due care, 161; decision of, relative to special legislation, 176;

- decision of, relative to amending charters, 183
- Swine, regulations relative to, 114, 115
- Swisher, J. A., acknowledgment to, 11
- Taverns, licenses issued to, 98, 99, 100
- Taxation, revenue secured by, 117; regulation of, in special charter cities, 128-138, 184
- Taxes, elections relative to, 38; levy of, 92, 94, 95, 128-132, 148, 153, 154, 215, 231; collection of, 123, 134-138, 196, 197; limitation on, 130; liens resulting from, 137, 138; receipts for, 137; levy of, in Davenport, 215
- Taxes, special, levy of, 127, 215
- Telephone systems, regulation of, in special charter cities, 167
- Territories, formation of, from Old Northwest, 17
- Tipton, charter of, 25, 189
- Toledo, special legislation for, 177
- Towns, general incorporation act for, 26, 239-243
- Trains, regulation of, 151
- Transportation, regulation of, 98, 116, 151, 175, 228
- Treasurer, city, election of, 41, 42, 224, 225; bond of, 47, 52, 60; appointment of, 48; duties of, 59-61, 83, 84, 137, 138, 169; water-works funds deposited with, 64; restrictions placed upon, 127; receipt given by, 137; special funds held by, 138; separate accounts kept by, 169; oath required of, 234
- Treasurer, county, collections made by, 136
- Trustees, appointment of board of, to operate water-works system, 168, 169, 170; compensation of, 169; bond of, 169
- Trustees (see Aldermen)
- United States, growth of municipal government in, 20; constitution of, 25; citizenship in, 67, 68; memorial building erected for soldiers of, 91
- Vacancies, filling of, 45, 46, 50; recent legislation relative to, 46
- Vehicles, regulations of, 116
- Ventilation, regulation of, 110
- Venue, right of change of, 144
- Veto, power of mayor relative to, 76; charters affected by, 249
- Viaducts, construction of, 151
- Villages, incorporation of, 239-243
- Voters, qualifications of, 38, 39, 195, 224; powers of, 39, 40
- Wapello, charter of, 25, 33, 149, 189, 190; elections in, 36, 42, 43; power of electors in, 40; provisions concerning officers of, 44, 45, 47, 48, 52, 53, 69, 71; filling of vacancies in, 46; duty of clerk in, 57; aldermen in, 66, 67, 68, 256; council of, 73, 74, 75; ordinances of, 77, 79, 80; authority of, over wharves and docks, 82, 83; ferries regulated by, 84; control of drainage in, 86; control of schools in, 93; regulation of sale of liquor in, 100; health regulation in, 101; hospitals in, 103; regulation of building in, 109; fire regulations in, 112; public safety in, 114; financial powers of, 119, 124, 129, 133, 136; duties of mayor in, 142, 144; improvement of streets in, 148, 149, 154, 163; population of, 256
- Wards, development of, 65; election of aldermen from, 66; division of Davenport into, 211
- Warrants, use of, 126; limits placed upon, 126
- Washington, charter of, 25, 189, 249
- Water rates, fixing of, 169
- Waterloo, special legislation for, 177
- Water-works, power of special charter cities to construct and control, 120, 131, 166, 168; decision relative to, 122
- Water-works trustees, board of, provision for, 61, 63; personnel of, 63; duties of, 63, 64, 168
- Weeds, destruction of, 106
- Weights, standard, regulation of, 110
- Western Gazette* (Bloomfield), notice of election in, 236; publication of charter in, 238
- Wharfage, regulation of, 81-83; revenue secured from, 117

- Wharf-master, election of, 41, 42, 224, 225
- Wharves, power of special charter cities over, 81, 82, 228
- Winterset, charter of, 25, 189; veto of bill relative to, 249
- Wires, electric, inspection of, 111
- Wisconsin, laws adopted from, 17
- Wisconsin Territory, charters granted by, 23, 24, 25, 174; legislation of, 24; incorporation act passed by, 249
- Work-houses, provisions for, 90
- World War, memorial buildings for veterans of, 91

